83-517

No.

In the Supreme Court of the United States

TERM, 1983

WANDA P. CHOCALLO, Administrative Law Judge,
Petitioner

v.

BUREAU OF HEARINGS AND APPEALS, SSA, HEW; ROBERT L. TRACHTENBERG, Director, BHA, HEW; PHILIP BROWN, Chief Administrative Law Judge, BHA; SOL R. GITMAN, Regional Chief Administrative Law Judge, Region III, BHA; JAMES C. LIGHTFOOT, Administrative Law Judge in Charge, Philadelphia Office, BHA; JAMES B. CARDWELL, Commissioner, Social Security Administration; COMMUNITY LEGAL SERVICES, INC. and JONATHAN M. STEIN; RICHARD WEISHAUPT; EDWIN MONTES; LINDA BERNSTEIN; MARJORIE JANOSKI; DEBORAH KOOPERMAN; EILEEN WOOD; MARILYN DORIA WEILER, all of Community Legal Services, Inc.; JOSEPH CALIFANO, Secretary, Department of Health, Education and Welfare; JOHN C. COLEMAN; JOHN ENNIS, Bureau of Hearings and Appeals, SSA; JACK ROSEMAN, Bureau of Hearings and Appeals, SSA; CLAIRE KURIGER, Bureau of Hearings and Appeals, SSA,
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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QUESTIONS PRESENTED

1. Whether the Court's failure to rule on dismissal and summary judgment motions for a period of more than 5 years is unconstitutional and constitutes a denial of due process?

2. Whether the district court, on the papers before it, was without jurisdiction and power to decide issues on the merits, that include the applicability of the doctrines of official immunity, collateral estoppel and privilege?

3. Whether a judicially enforceable remedy is available under the Civil Rights Act, 42 USC 1985, to federal administrative law judges against interference, harassment and injury by agency officials and public service lawyers, acting in concert, during and on account of the lawful discharge of judicial functions?

4. Whether the Court has a duty to prevent the requirements of the Administrative Procedure Act from in any manner or form of indirection being nullified or circumvented?

5. Whether the complaint sufficiently alleges a cause of action?

6. Whether the denial of a motion for judgment on the pleadings on the basis of the record is unconstitutional and contrary to law?

7. Whether the judgment of the court below is contrary to law and unconstitutional?

TABLE OF CONTENTS

TABLE OF CITATIONS

CASES:

No.

IN THE SUPREME COURT OF THE UNITED STATES

Term, 1983

WANDA P. CHOCALLO,

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v.

THE BUREAU OF HEARINGS AND APPEALS et al.,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioner, Administrative Law Judge Wanda P. Chocallo, petitions for a writ of certiorari to review the per curiam judgment order of the United States Court of Appeals for the Third Circuit dated June 1, 1983 affirming the judgment of the District Court for the Eastern District of Pennsylvania.

OPINIONS BELOW

The court of appeals opinion is not reported (App. 1a). The district court's opinion is reported, 548 F.Supp. 1365 (App. 3a).

JURISDICTION

The judgment of the court of appeals was entered June 1, 1983. A timely petition for rehearing was denied on June 27, 1983. 28 USC 1343. The jurisdiction of this Court is invoked under 28 USC 1254.

CONSTITUTIONAL PROVISIONS, STATUTES, REGULATIONS INVOLVED

The constitutional provisions, statutes and regulations involved, which are set forth in Appendix, 161a et seq., infra, are: The Civil Rights Act, Title 42 USC Sec. 1985(1)(2) and (3); Crimes, Title 18 U.S. Code, Secs. 372, 241, 1505; Social Security Act, Title 42 USC Secs. 405, 1631; Regulations, Secretary of Health, Education and Welfare, 20 C.F.R. Sec. 404.922; Administrative Procedure Act, Title 5 USC Secs. 552(d), 552(e)(1) to (3)(d), inclusive and Sec. 552(g)(1) to (4)(B), inclusive; Administrative Procedure Act, Title 5 USC Secs. 554, 556 and 557; Federal Rules of Civil Procedure, Rule 7(a)(b), Rule 8(a)(b)(c), Rule 12(a)(b)(e), Rule 38(a) and Rule 56(c).

STATEMENT OF THE CASE

By complaint filed July 1, 1977, petitioner, Wanda P. Chocallo, invoked the jurisdiction of the federal court to assist in the execution of her duties as a Social Security Administrative Law Judge (ALJ) and to protect her from interference, pressure and intimidation by agency officials and public service lawyers, acting in concert, and from illegal agency policies and practices adverse to impartial justice. A jury trial was demanded. The complaint was amended twice in August, 1977 to add new causes of action and join additional parties.

Injunctive, declaratory and monetary relief are requested based on an alleged conspiracy to violate petitioner's constitutional and statutory rights; deprive her of her office; interfere, hinder, obstruct and injure her on account of the lawful discharge of her obligations, and for safeguarding claimants' and the public's interests under the Social Security Act and the Fifth Amendment; discredit and defame her; deter her and retaliate against her for free speech, thought and petition.

The allegations made raise claims under the Civil Rights Act, 42 USC 1985; the Administrative Procedure Act, 5 USC 101 et seq.; the Social Security Act, 42 USC 401 et seq.; the Freedom of Information/-Privacy Act, 5 USC 552(a) et seq.; the First, Fourth, Fifth and Ninth Amendments to the United States

Constitution; libel laws of Pennsylvania, and inferred statutory causes of action under 5 USC 7211; 18 USC 372; 18 USC 241; and 18 USC 1505.

The Court is asked to enjoin the conspiracy; illegal policies and practices; a threatened ultra vires adverse employment action by the director; to declare null and void an ultra vires Appeals Council order issued during the course of proceedings that purported to divest her of jurisdiction, vacate an interlocutory order, remand the case to the Chief Regional Administrative Law Judge and direct him to reassign the case; to declare invalid departmental regulations authorizing Appeals Council, whose members are not ALJs appointed under the APA by the Secretary but are appointees and subordinates of the director, to hear and decide social security cases and to review ALJs' final decisions; and to order a full inquiry into the alleged illegal and criminal activities of the agency and Community Legal Services, Inc. of Philadelphia.

Damages include injury, at the hands of the conspirators, to career; reputation; economic advantage; dignity; privacy; mental anguish and physical and emotional distress. Also damages for violations by agency officials arising under the Freedom of Information/Privacy Act.

Respondents are the Bureau of Hearings and Appeals (BHA), Social Security Administration (SSA), its director, Trachtenberg, and his ministerial subordinates Brown, Gitman, Lightfoot, Ennis, Roseman and Kuriger, sued individually and officially for actions outside the scope of their legal authority; Cardwell, the Commissioner of SSA, sued officially as the

person designated by regulation to decide appeals under the FOIA/Privacy Act by those denied access to their records; the Secretary of HEW and claimant Coleman, joined merely as interested parties; Community Legal Services, Inc. of Philadelphia (CLS) and attorneys and paralegals employed by it, sued officially and individually, viz., Stein; Bernstein; Weishaupt; Montes; Janoski; Kooperman; Wood and Weiler.

No answers were filed. CLS respondents moved in the district court for dismissal. BHA respondents moved for dismissal and in the alternative for summary judgment on the basis of affidavits. In opposition, petitioner responded with affidavits of her own. No motion was filed by the Social Security Commissioner.

On May 14, 1981, the district court, without giving respondents an opportunity to reply, denied, without comment, petitioner's motion for judgment on the pleadings filed May 8, 1981.

On October 8, 1982, the district court granted respondent's dismissal and summary judgment motions. On the papers before it, the court proceeded to decide the case on the merits. The district court's actions were affirmed by the Circuit Court panel, without deciding the questions before it on appeal and without comment.

The gravamen of petitioner's complaint is that rights and duties, conferred upon her and other ALJs by statutes, legal regulations and prior agency practice, are being continuously infringed by BHA's actions without authority in law. Such actions are directly or indirectly coercive and impair the impartiality of the

social security justice system and imperil the integrity of its fund. They are calculated to divest ALJs of their statutory plenary, discretionary powers by administrative fiat, without legislation, and to subject them to agency supervision and control.

The allegations are supported by numerous attached Exhibits which reflect the broad conspiracy.

Petitioner is an employee of the Department of HEW.* In July, 1974, she was appointed a hearing examiner by the Secretary and assigned to the Philadelphia BHA hearing office. In January, 1976, by Act of Congress, she was appointed a temporary Administrative Law Judge. She was promoted to GS-14 on April 11, 1976 by Civil Service Commission reclassification. In January, 1978, by further Act of Congress, she was appointed a career absolute ALJ and promoted to GS-15. Pursuant to Act of Congress, she was directly delegated all the Secretary's statutory plenary discretionary powers to adjudicate social security cases under Titles II, XVI and XVIII of the Act. SSA ALJs issue final decisions to parties in their own names. Their official position description, issued by respondent BHA, provides that the "Social Security and Administrative Procedure Acts prohibit supervision and substantive review" of the ALJs' judicial functions; that they are "*subject only to such administrative supervision as may be required in the course of general office management.*" Petitioner, at the time, enjoyed the highest professional reputation.

Commissioner Cardwell appointed Trachtenberg Director, BHA, in January, 1975 to nullify, by administrative fiat, the statutory autonomy of ALJs. Trachtenberg also served as Chairman of Appeals

* The Secretary did not fire petitioner. Nor did he file an adverse action proposing her removal.

Council, a non-statutory body. He appointed its members. Appeals Councils, by regulations, are authorized to hear and decide cases and to review ALJs' final decisions on a certiorari basis under certain prescribed conditions.

Trachtenberg also appointed his managerial assistants. Respondents Brown, Gitman and Lightfoot were among those appointed. Under the guise of management reforms, his managerial assistants implemented his unlawful policies, which are the subject matter of the complaint. ALJs were subjected to extraneous factors intended to influence proceedings, inevitably calculated to disturb the course of justice or psychologically calculated to disturb the exercise of an impartial and equitable judgment.

The events leading to the conspiracy had their genesis in the John C. Coleman SSI case heard on December 29, 1975, at which time petitioner discovered Coleman and his attorney, respondent Bernstein, suppressed material evidence that affected entitlement to SSI payments. They were directed to submit post-hearing documentation. They never did.

Following the hearing, Bernstein, Lightfoot, Gitman, Brown and Trachtenberg undertook a trial by *ex parte* letters (App. 101a, 103a, 126a, 128a, 130a, 131a) and extra-judicial proceedings. Bernstein wanted petitioner out of the case. Fraud was uncovered by petitioner. BHA abetted the fraud. Petitioner was subjected to a pervasive pattern of harassment and threats to drive her out of the case. In letters to Lightfoot and Brown, which went squarely to the merits of the case proceeding, Bernstein impugned petitioner's fairness, motives and honesty. Lightfoot requested petitioner to

respond to her false and malicious accusations; further, that she voluntarily withdraw from the case. She would not. She was directed to be at Gitman's office on January 19, 1976 to discuss the case. At that time, Gitman threatened she would be investigated and fired for refusing to engage in private talk about the case. On January 15 and 22, 1976, petitioner reported the threats and unwarranted interference to Trachtenberg for remedial action. Instead, he sent a bludgeoning reply on February 17, 1976 (App. 113a, 123a). In it, he accused petitioner of not performing her job as an ALJ. He stated she grossly misinterpreted an ALJ's independence; misunderstood the hearing process; rendered a disservice to Coleman and the public by taking his testimony instead of hearing legal argument as proposed by Bernstein; that her failure to cooperate with Lightfoot and Gitman, whose actions he fully supported, could be construed as insubordination; that she was non-productive. Brown informed petitioner in September, 1976, based on Bernstein's letter to him, petitioner's decision, when issued, would be reviewed by Appeals Council.

Petitioner was being constantly harassed to surrender the case files under various pretexts. On February 27, 1976, Gitman, at Trachtenberg's direction, demanded she relinquish them within three hours. She would not.

Respondents conduct had a disruptive, threatening impact. It impeded and obstructed the prompt, proper and full development of the record. BHA counseled, condoned and supported Bernstein's refusal to comply with 3 hearing notices for supplementary

hearings and with subpoenas issued on her and her client directing them to appear and produce documentation required by law. Bernstein testified as a witness for Coleman at the December hearing.

So that the case could be properly adjudicated, petitioner was compelled to develop the record herself from collateral sources. The documentation obtained revealed Coleman defrauded the government of $3000 which he was ordered to repay. Petitioner's decision dated October 29, 1976 is attached to the complaint as Exhibit "H".

On February 29, 1976 (App. 106a, 111a), the Secretary was petitioned to investigate the entire matter, including other detailed and documented charges. A copy was sent to Congress with a request for an independent inquiry.

Therafter, petitioner became Trachtenberg's prime target. A concerted campaign, participated in by BHA, CLS and the Civil Service Commission (CSC) was immediately undertaken to discredit and destroy her and to contrive evidence to justify her removal. Only the Secretary under the APA can hire and fire ALJs. This power cannot be delegated. Secret, extensive investigations of petitioner's background were carried out and, as a result, misrepresented her trustworthiness. Malicious, false rumors were spread; false charges and reports contrived and circulated impugning her professional competency and integrity. Her staff and other BHA personnel were pressured to spy on her and furnish contrived complaints. Her decisions were subject to selective review rather than the customary *ad hoc* one. Other forms of harassment were directed against her. She was denied support

staff. Cases were not assigned by rotation. She got the oldest and worst cases. Trachtenberg refused to process her appointment as a temporary ALJ and her promotion due by law. He altered her attendance and payroll records. Trachtenberg advised her on April 5, 1976 (App. 109a, 145a, 150a) he considered it inappropriate to respond to her letter of February 29, 1976, though requested by the Secretary to do so, because he decided to file an adverse employment action against her based on his careful consideration of the materials submitted. CSC counseled, advised and helped draft the charges. They were never served on petitioner. They were based on the events in the Coleman case and appear in the appendix.

Significantly, in a response sent by Cardwell, dated April 2, 1976, to Congress's inquiry into the matter, he advised it would be inappropriate to answer the charges because of Trachtenberg's proposed adverse action. He added:

> "The concept of supervision without interference in the exercise of an ALJ's judgment seems to be the issue. I would note that both Mr. Trachtenberg and I support the need for ALJ's to accept supervision in this sense. Beyond that, I do not think I should comment further in light of the plan for the Bureau of Hearings and Appeals to take the matter to the Civil Service Commission."

The covert investigation of petitioner proved unavailing. A new strategy was devised. CLS filed unauthorized motions to disqualify in two cases before petitioner in February, 1977. These were in the form of letters signed by CLS. The motions were designed

to make evidence by claiming petitioner was biased against CLS lawyers and those claimants who did not work and had psychiatric disorders. Both motions were repudiated by respective claimants when apprised of them. However, it was the first motion, with accompanying attachments (Exhibit "F", Complaint) that furnished proof of what petitioner suspected and knew but was without supporting documentation. The attached letters outlined a course of conduct deliberately calculated to deprive petitioner of her constitutional and civil rights.

Finally, claimant Pearl Taylor testified at a hearing before petitioner that Stein of CLS admitted to her that an ultra vires Appeals Council order issued in her case on June 9, 1977 was part of an ongoing conspiracy to remove petitioner. He threatened she would go down in defeat if she didn't join them in the battle but appeared at a further hearing before petitioner set for June 13, 1977. She also disclosed Gitman told her petitioner denied 15 other claims like hers because of prejudice against poor people and those with nervous disorders. He promised her she would receive benefits if she helped them get evidence to effect petitioner's removal. Taylor denounced BHA for issuing the ultra vires Appeals Council order without her knowledge and consent. She charged BHA and CLS with violating her rights and repudiated the order. She had also charged CLS with misusing and abusing her for their own evil ambitions. Because she appeared at the June 13th hearing, CLS returned the files in another case of hers they were handling. CLS was barred by the Public Service Corporation Act, effective at the

time, from representing Taylor in her social security claim because hers was a fee-generating case. She received a lump sum payment of approximately $10,000 for retroactive disability benefits (App. 53a-61a)

Following the hearing, petitioner met with the United States Attorney and reported these obstructions of justice for investigation. He declined to act.

BHA made several attempts during the course of the Taylor proceedings to divest petitioner of the files. During petitioner's absence, at Trachtenberg's direction, her locked office was broken into and an unlawful search and seizure made (Second Amended Complaint, p. 143a).

After this action was filed on July 1, 1977, Trachtenberg filed another retaliatory removal action with Civil Service, which charged her with no offense known to law. It merely stated petitioner disobeyed a lawful order of Appeals Council by holding a hearing in the Taylor case on June 13, 1977; by failing to relinquish the files, and by holding an unfair hearing in the Coleman and Taylor cases. Petitioner's complaint was amended to add this further violation of her rights and as proof of the conspiracy. (1st Amended Comp. 140a, 141a)

Stein, repudiated by Taylor on Feb. 15, 1977, unknown to her, then wrote unauthorized ex parte letters to Gitman et al. purporting to speak for her and demanding petitioner's removal from office and the case. The language used was designed to ridicule and subject her (petitioner) to contempt and aid the conspirators in their plot to discredit; fire; interfere with and obstruct her in the conduct of the Taylor proceedings. (§15Comp., 54a; 87a; Attachments to Rspdts' Affidavits)

REASONS FOR GRANTING THE WRIT

Petitioner's request for writ of certiorari, it is respectfully submitted, meets the requirements of Rule 17.1(a) and (c). The district court has so far departed from the accepted and usual course of judicial proceedings, sanctioned by the federal court of appeals, so as to call for an exercise of this Court's power of supervision. Important questions of federal law should be settled by this Court and conflicts with applicable decisions of this Court remedied.

This case presents questions of first impression in the construction of an Administrative Law Judge's (ALJ's) rights under the Civil Rights Act, 42 USC 1985. This is the first lawsuit brought by an ALJ for protection from interference, harassment and injury during and on account of the lawful discharge of judicial duties. It should be closely watched by every concerned citizen and meticulously scrutinized by this Court because it will point to a legal standard. A suit brought in behalf of ALJs employed by the Health and Human Services Department to restrain certain illegal practices by OHA officials of HHS and SSA is pending before the United States Dist. Ct., Dist. of Col. (*Assoc. of ALJs, Inc. v. Schweiker et al.*, CA 83-0124).

There are serious questions affecting the public interests which this Court has a legal interest to resolve. The decision in this case poses a dangerous threat to the entire federal justice system and to individual

liberty. It must necessarily constitute a precedent. It will soon be accepted as a final decision on the questions by all branches of government, as well as lawyers and litigants, irrespective of its patent constitutional and legal defects. It will at once come before the Executive Branch and be construed as providing license to lawless conduct and judicial sanction for intimidating and controlling ALJs in the course of administrative proceedings.

An important consideration for this Court is that Congress condemned the practices alleged and this Court, as supervisors of the federal system, should see that the law is enforced not selectively but in all cases coming before it.

Congress, by enacting the Civil Rights Act, 42 USC 1985, and its criminal counterparts, 18 USC 372 and 18 USC 1505, soundly determined that the federal interests in carrying out of federal functions should be protected. Every government official, entrusted by the very terms of his office with powers and duties to be exercised and discharged for the general welfare, has a right to apply to the courts for any proper assistance in the exercise of the one and the discharge of the other. *Stern v. U.S. Gypsum, Inc.*, 547 F.2d 1329; *Bell v. Hood*, 327 U.S. 678.

Congress, by enacting the Administrative Procedure Act, forbids direction and supervision of ALJs in the performance of their judicial functions. It sought to remedy what were believed to be evils in the way in which administrative agencies exercised their authority prior to its enactment on June 11, 1946. It is a sweeping piece of remedial legislation that cannot be

divorced from the evils Congress sought to prevent and correct. *U.S. v. L.A. Tucker Lines*, 344 U.S. 33, 73 S. Ct. 67. In addition, the Supreme Court in the last decade has repeatedly recognized the importance of the proper respect of the independent role of ALJs within the executive branch of our federal system of justice. It soundly determined that it is a fundamental necessity to maintain ALJs free from the control and coercive influences, either direct or indirect, of the executive, legislative or politics, and from pressures by the parties or other officials within the agency. *Butz v. Economou*, 438 U.S. 478 (1978).

This Court has consistently held that once a department head has by regulation delegated his discretionary powers pursuant to law, he denies himself the authority to exercise the discretion delegated even though the original authority was his and he could reassert it by amending the regulation. So long as the regulation remains in force, the sovereign, composed of the three branches, is bound to respect and to enforce it. *United States v. Nixon*, 418 U.S. 683 (1974).

These doctrines gave root to petitioner's claims. Pursuant to the mandates of the Code of Judicial Conduct, cited in her complaint, Petitioner took positive measures to protect the sovereign's interest in the integrity and fairness of the social security justice system, as well as her rights as a federal officer, judge and person. In the opinion of the district and circuit courts, a person who accepts a position as an ALJ thereby forfeits his civil, constitutional and statutory rights.

The entire proceedings in this case bear the taint not only of an appearance of impropriety and unfairness but that of actual impropriety and unfairness. An unconscionable delay of five and a half (5½) years in ruling on the motions before the court is *ipso facto* unconstitutional. It constitutes a clear denial of due process. The mandate of F.R.C.P., Rule 56, requires a quick resolution of the issues presented on motion for summary judgment. This Court has frequently emphasized that "insubstantial lawsuits can be quickly terminated by federal courts." *Harlow v. Fitzgerald*, 73 L.Ed. 2d 396, 102 S.Ct. (1982). The federal rules, as mandated by Rule 1, must be construed to "secure the just, *speedy*, and inexpensive determination of every action." The highly prejudicial and unconscionable action of the district court, sanctioned by the appeals court, calls for the supervision of this Court. Justice delayed is justice denied is not an idle maxim. It has been given validity by this Court. The appeals court failed to rule on this vital issue.

Paradoxically, the district court acted with extreme haste in ruling on petitioner's motion for judgment on the pleadings. Within six days it entered an order denying the motion, without giving respondents an opportunity to reply and petitioner reasons for its action. Under Rule 56, there is no express extension of time for filing responsive pleadings until disposition of the motion for summary judgment. Respondents made no application for an extension of time beyond that originally granted. And the Court did not enter an order postponing the filing of answers until disposition of the motions. It is clear petitioner is entitled to such judgment.

Our system of government guarantees the right to petition the courts for redress of grievances. It is among the most precious liberties safeguarded by the Bill of Rights. The right of trial by jury on issues of fact is also among its sacred guarantees. This is a substantial right loved and cherished by the American people. The average judgment of twelve jurymen of average sense, drawn as they are from all walks of life and impartially selected, is more likely to reach a practical and honest result in sifting, weighing, rejecting, reconciling proof, and deciding facts than is the trained judge.

The summary judgment statute is drastic and may not be used as a perversion of justice and abuse of it. The court does not try the facts upon affidavits but merely decides whether the case presents facts to be tried by a jury. *Hart & Co. v. Recordgraph Corp.*, 169 F.2d 580 (1948, 3rd Cir.).

The district court, though inconsistent with applicable law and the unique facts of this case, concluded petitioner has no remedy for the wrongs committed nor a right to trial by jury. To achieve this result, the court exercised powers it does not possess. The district court went beyond its province to resolve issues that would arise on the merits.

The sole dispositive issue presented the district court is whether the complaint sufficiently alleges a cause of action under any state of facts. The defenses of immunity, collateral estoppel and privilege were not before it. Responsive pleadings were not filed. The court lacked power and jurisdiction to consider and decide these issues that arise on the merits.

It is well settled that on dismissal motion, the court must assume that all well-pleaded allegations of the complaint are true and must set out the facts alleged in the light most favorable to plaintiff. The complaint should not be dismissed unless it appears to a certainty that plaintiff would not be entitled to relief under any state of facts which could be proved in support of her claim; further, no matter how likely it may seem that the pleader will be unable to prove her case, she is entitled, upon averring a claim, to an opportunity to try to prove it. *Conley v. Gibson*, 355 U.S. 411.

In determining whether summary judgment is proper, a court ordinarily must look at the record in the light most favorable to the party opposing the motion, drawing all inferences most favorable to that party. *Harlow v. Fitzgerald*, supra, fn. 26; *Poller v. Columbia Broadcasting System*, 368 U.S. 464, 7 L.Ed. 2d 458, 82 S.Ct. 486 (1962); *Fitzgerald v. Seamans*, 553 F.2d 220 (1977 D.C. Cir.). Under this rule plaintiff's affidavits must be taken as true—with all disputes resolved in her favor as the party opposing summary judgment. Affidavits filed in support of motions to dismiss and summary judgment may be considered for purposes of ascertaining whether an issue of fact is presented, but they cannot be used as a basis for deciding the fact issue. An affidavit cannot be treated, for purposes of motion, as proof contradictory to well-pleaded facts in the complaint. *Hart v. Recordgraph*, supra.

The principles stated were not adhered to by the District Court in its disposition of respondents' mo-

tions. Its opinion makes it evident that it failed to properly confine the scope of its consideration and that it proceeded to decide the fact issues. Until now, the Circuit Court consistently adhered to these propositions. It recognized that an inferior court in the federal hierarchy is compelled to apply the law announced by the Supreme Court as found on the date of its decision. *U.S. v. City of Philadelphia*, 644 F.2d 187 (3rd Cir. 1980).

One issue that would arise on the merits is the applicability of the doctrine of official immunity, either as an absolute immunity or qualified immunity.

On the papers before it, the district court was precluded from deciding Trachtenberg acted in good faith and is entitled to qualified immunity and that Brown, Gitman et al. are entitled to absolute immunity because of their ALJ titles. Parenthetically the court casually abandoned the functional approach to immunity that has run through all the decisions of the Supreme Court.

It is well established that immunity must be pleaded as an affirmative defense in actions under the constitution and laws of the United States and the burden of proof is on defendants. *Gomez v. Toledo*, 446 U.S. 635, 100 S.Ct. 1920, 64 L.Ed. 2d 572; *Harlow v. Fitzgerald*, supra.

Another issue that would arise on the merits is the applicability of the doctrine of collateral estoppel. Collateral estoppel, too, is an affirmative defense that must be factually pleaded and subject to the same rules. The district court was without power to rule

that the claims asserted under the Social Security and Administrative Procedures Acts are barred by the doctrine of collateral estoppel. It ruled petitioner is barred from challenging the validity of the ultra vires June 9, 1977 Appeals Council order issued by Trachtenberg in the Taylor case; the validity of departmental regulations authorizing Appeals Council to hear and decide social security cases; and her independent status as a judge by virtue of the Secretary's delegation and the provisions of the Social Security and Administrative Procedure Acts (as confirmed by the position description). He found these matters were decided in an CSC recommended decision, which was properly before the court. The decision, moreover, had no finality. Under the FOIA/Privacy Act it is not a public record accessible to the public since it is not a final decision. It is the court's duty to rule on the validity of administrative regulations.

The applicability of the doctrine of privilege is a further issue that would arise on the merits. Privilege is an affirmative defense that must be pleaded. The district court ruled, based on their motion to dismiss, CLS respondents' actions are privileged. It found they merely exercised their constitutional and statutory rights of free speech "by filing complaints with petitioner's supervisors about the manner in which she performed her duties." It emphasized the importance of protecting the independent status of attorneys. It made no reference to the alleged need to preserve the ALJ's independence. It inaccurately stated the complaint only charges them with "vigorous advocacy." It also ruled no statutory and constitutional rights were

violated under the Fifth Amendment. It made no ruling on petitioner's First Amendment claims, including retaliation for petitioning for redress of her grievances and invasions of privacy and defamation. It dismissed all claims against CLS. It also erroneously ruled that no claims against CLS are asserted under the Civil Rights Act, 42 USC 1985. This too involves an issue that would arise on the merits.

The provisions of Section 1985(3) of the Civil Rights Act provide that the act of one conspirator is binding on all and any one or all is liable for damages. The court chose to ignore this.

The district court entered summary judgment for BHA respondents on the claims under the Freedom of Information Act. It ruled there was "*no evidence of record*" the agency acted intentionally and willfully. It also found there is no basis for injunctive relief. Yet, the law requires a de novo hearing before the court.

It entered summary judgment on the Privacy Act claims by deciding the letters, solicited covertly and without compliance with the provisions of the Act, are relevant and necessary to a determination whether petitioner properly performed her functions as an ALJ.

It entered summary judgment for Ennis, Roseman and Kuriger by deciding they were acting at the direction of Gitman and entered and searched petitioner's locked office to obtain the Taylor files. It found they did not violate the Fourth Amendment.

It made no ruling on petitioner's other First Amendment claims.

The Circuit Court in its decision did not dispose of these issues which were squarely presented. It conclusorily stated in its judgment order that there are no disputed facts and errors of law. The records before the court precluded the rulings made by it. The court's action cannot be sustained when examined in traditional manner and in light of traditional judicial sources. It is patently wrong and illegal. Its decisions, moreover, do not accurately and fully represent the facts in this case.

The theory of our judicial system is that the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, whether by private talk or public print. *Patterson v. Colorodo*, 205 U.S. 454. Legal trials are not elections to be won through use of meeting halls. Administrative law judges should be protected from unnecessary interference and harassment.

The potential danger of what occurred here is that it permits a small group of unscrupulous public service lawyers with a "rule or ruin" motto and officials with a "might makes right policy" to, by conspiratorial means, hold a judge hostage by threat of a removal drive. It is petitioner today. Tomorrow it will be others. The tide must be turned for the common good before it is too late. When the people neglect their interests, they afford their rulers an opportunity of retreating from freedom back toward despotism. Though the system remains literally the same, the officers take advantage of its defects and mostly, by gradual abuses, entrench themselves and friends in of-

fice until the general interest as much as possible is put out of view.

Courts exist to assure each individual he, as an individual, has enforceable rights that he may pursue to achieve a peaceful redress of his legitimate grievances. Damages have been regarded as the ordinary remedy for an invasion of personal interests in liberty. *Halperin v. Kissinger*, 604 F.2d 1192 (1979) (D.C. Cir.). The principle that should guide the Court in its decision was stated long ago by Chief Justice Marshall: "The very essence of civil liberties consists in the right of every individual to claim the protections of the law whenever he receives an injury." *Marbury v. Madison*, 1 Cranch 137 (1803). Courts have a traditional function of enforcing federally guaranteed rights. Our courts held there is a public interest in vindicating First Amendment rights of public employees.

The number of cases protecting judges (including ALJs) against suits for wrongs committed by them against party litigants during the course of judicial proceedings is legion. This Court recently noted in *Harlow v. Fitzgerald*, supra: "We—judges collectively—have held that the common law provides us with absolute immunity for ourselves with respect to judicial acts however erroneous or ill advised." This right is not a creature of statute or Constitution. It is a product of judicial insemination.

This Court is now called upon to chart a new course, one that will protect the right of judges, albeit Administrative Law Judges, to sue for wrongs against them on account of their *lawful* judicial acts. This is a

legitimate right. It was spawned by Congress and the Constitution.

A 48 page opinion, on the papers before it, where the court refused to rule on motions for more than 5 years, and where it went beyond its legitimate functions and powers to decide the case on the merits so as to absolve the wrongdoers for actions Congress made criminally punishable and to discredit and present the victim in a false and unfavorable light, on its face, warrants an exercise of this Court's supervisory powers. In addition, for an appeals court to sanction and compound such radical departures from substantive and legal modes of procedure in a case seriously impugning the executive judicial system, manifests an urgent need for remedial action and reform by this Court to restore integrity and confidence in the American system of justice.

It is the solemn obligation of the court to search for and tell the truth. Truth is indispensable to justice. The courts here did not present the true facts. Justice was not rendered.

CONCLUSION

For the reasons stated above, the Petition for Writ of Certiorari should be granted.

Respectfully submitted
HONORABLE WANDA P. CHOCALLO
Pro Se

308 Maple Ave.
Drexel Hill, PA 19026

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 82-1754

WANDA P. CHOCALLO

v.

BUREAU OF HEARINGS AND APPEALS, SSA et al.

HON. WANDA P. CHOCALLO, APPELLANT

(D.C. Civil No. 77-2310)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HON. JAMES T. GILES, DISTRICT JUDGE

Submitted Under Third Circuit Rule 12(6) June 1, 1983
Before: GIBBONS, HUNTER and MARIS, *Circuit Judges*

Judgment Order

JUDGMENT ORDER

Wanda P. Chocallo, a former Administrative Law Judge with the Social Security Administration, appeals from a final judgment dismissing some counts of her complaint for failure to state a claim on which relief can be granted, and granting summary judgment on the remaining counts. The defendants include Community Legal Services, Inc. and some attorneys employed by it, the Bureau of Hearings and Appeals, some individual Administrative Law Judges and some officials of the Social Security Administration. The trial judge carefully considered separately each ground for relief alleged against each defendant. We agree that those claims which were dismissed pursuant to Rule 12 (b) (6) fail to state a claim on which relief can be granted. As to those claims on which summary judgment was entered we find no material disputed fact issues, and no legal error.

It is ORDERED AND ADJUDGED that the judgment of the district court is affirmed. Costs are taxed in favor of appellees.

BY THE COURT,
s/JOHN J. GIBBONS
Circuit Judge
Attest:
s/Sally Mrvos
Sally Mrvos, *Clerk*

Dated: Jun 1, 1983

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 77-2310

WANDA P. CHOCALLO

v.

BUREAU OF HEARINGS AND APPEALS, SSA, et al.

MEMORANDUM AND ORDER

GILES, J., October 8, 1982

INTRODUCTION

This is an action by a former Administrative Law Judge ("ALJ") Wanda P. Chocallo ("Chocallo"), which in the main, challenges on constitutional and statutory grounds certain federal agency actions which she claims prevented her from discharging her duties as an ALJ, interfered with her judicial independence and integrity and disqualified her from hearing certain social security cases assigned to her.

Chocallo sues all named defendants, private and governmental, as members of a conspiracy allegedly cognizable under 42 U.S.C. §1985. She also asserts viola-

tions of the Fifth Amendment, the Privacy Act of 1974, 5 U.S.C. §552(a) (g) (1), *et. seq.* and the Administrative Procedure Act, 5 U.S.C. §101 *et seq.* Jurisdiction is properly asserted under 28 U.S.C. §§1331 and 1343 (1976).

Each defendant has moved either to dismiss the complaint for failure to state a claim under Fed. R. Civ. P. 12(b) (6), or alternatively, for summary judgment under Fed. R. Civ. P. 56. For the reasons which follow the motions shall be granted and judgment shall be entered in favor of all defendants and against plaintiff.

I. BACKGROUND

When bringing this action in July of 1977, plaintiff held the position of temporary ALJ assigned to the Bureau of Hearings and Appeals of the Social Security Administration, Department of Health, Education and Welfare ("DHEW"). In this capacity, she heard claimants' appeals from initial adverse determinations of social security insurance benefit eligibility, and rendered decisions. Her ALJ decisions were reviewable on the merits by the Appeals Council of the Social Security Administration. If affirmed at that level, the ALJ's opinion became the final decision of the Secretary of the Department.

Based on allegations of conduct unbecoming her office, arising largely from the incidents underlying the complaint in this court, Chocallo was subsequently removed from her temporary position as ALJ. The decision to remove her was made by the Merits Protection Board and affirmed by the United States District Court for the

District of Columbia in *Chocallo v. Prokop,* No. 80-1053 (D.D.C. October 10, 1980). The incidents giving rise to Chocallo's complaint basically cover a one and one half year period between December, 1975 through June, 1977, and are best described as four separate series of events.

A. *The Pearl Taylor Case*

Commencement of this action coincided with plaintiff's refusal to cooperate in the reassignment to another ALJ of the social security claim file of one Pearl Taylor, a claimant who sought disability status by reason of a mental condition. At all times material to this proceeding Taylor was represented by defendant Community Legal Services, Inc. ("CLS") through its employee Jonathan Stein, Esquire, and Edwin Montes, a paralegal to Stein. Prior to a February, 1977 hearing before plaintiff on the Taylor claim Stein had filed a request with plaintiff, supported by affidavits, asking that she recuse herself as the ALJ in the matter because of alleged bias against all social security claimants who had mental problems and who were represented by CLS. The recusal motion also alleged general bias and prejudice against CLS representatives. Plaintiff refused to recuse herself at the February 15, 1977 hearing. At that time, plaintiff also interrogated the claimant over the objections of counsel, about various aspects of her attorney/client relationship, as well as claimant's involvement in the recusal motion, out of the presence of her attorney (Complaint, Exh. D. p. 9), (Complaint ¶¶ 13, 14 15). Chocallo terminated the hearing

without decision because of Stein's vigorous objections to plaintiff's actions.

Following the hearing, Stein filed a written complaint to the Appeals Council, demanding reassignment of the case for bias demonstrated at the hearing and inviting its review of the hearing transcript. (Complaint, ¶ 15, Brown Affidavit, ¶ 8). Defendant, Philip T. Brown, Chief Administrative Law Judge, received Stein's letter complaint dated February 15, 1977. He addressed an internal communication to Chocallo on March 10, 1977 advising her of his concern over the possibility that claimants were becoming victims of an obviously poor relationship between CLS and plaintiff. (Brown Affidavit ¶ 8). Speaking on behalf of the Appeals Council, Brown stated that no action would be taken until it had reviewed the transcript and tape recording of the February 1977 hearing. (Complaint, ¶ 17). On March 15, 1977, Chocallo wrote to claimant Taylor, *ex parte,* informing her that on February 17, 1977 an attempt had been made by "the Administrative Officer of this Office" to secure Taylor's files. (Complaint ¶ 16, Exhibit B).

On May 10, 1977, before the Appeals Council could act Chocallo entered a decision and order barring both Stein and Montes from further participation in the proceedings on behalf of Taylor. (Complaint, ¶ 18, Exhibit D). In the opinion, plaintiff expressed the belief that Stein had breached his professional responsibility to the claimant by failing to disclose the recusal motion to his client.[1] Chocallo's opinion incorporated a newspaper ar-

[1] The Code of Professional Responsibility, adopted by the American Bar Association, Ethical Considerations EC 7-9 and EC 7-11 support the use of discretion by an attorney not to disclose to a client information such as a recusal motion.

ticle critical of CLS, and particularly Stein, on a subject totally unrelated to either the claimant, the merits of claim or the field of social security benefits. *Id.* Prior to rendering her decision, she had mailed a copy of the same newspaper article, *ex parte,* to Taylor. (Brown Affidavit, ¶ 9). Plaintiff's barring order required claimant to obtain substitute counsel within 30 days.

The order was issued without notice or a hearing, in the face of a statutory provision and implementing regulations which require prior notice and a hearing before a duly designated or appointed representative can be dismissed from practicing before the Social Security Administration. 42 U.S.C. §1383(d)(2); 20 C.F.R. §§416.1503, 416.1540-.1565. The barring order came to the attention of the Chief Administrative Law Judge Brown, who determined that it was contrary to law. (Brown Affidavit, ¶ 11). On his motion, the Appeals Council issued an order dated June 9, 1977 removing the Taylor case to the Council pursuant to 20 C.F.R. §416.1459. The case was then remanded to the Regional Chief Administrative Law Judge for reassignment to another ALJ.

A copy of the Appeals Council order was served on plaintiff on June 10, 1977 by defendant Sol Gitman, Assistant Regional Chief Judge. Defendant James C. Lightfoot, Administrative Law Judge in charge of the Philadelphia Office of the Bureau of Hearings and Appeals, and defendant John Ennis, another ALJ, were also present. Gitman made an oral demand upon plaintiff to return the file but she responded that she did not have it in her office and even if she did, she would not surrender it to him (Gitman Affidavit, ¶ 15). Later, a written demand was made on the same day, to which plaintiff made no

response. (Gitman Affidavit, ¶ 16). Her refusal was then reported to Chief ALJ Brown.

Plaintiff ignored the statutory and regulatory authority for the case reassignment action, contending that it was violative of her rights as a presiding judge and as protector of the interests of the claimant Taylor and the public. (Complaint, ¶¶ 26, 27, 28). Following receipt of the Appeals Council Order, plaintiff contacted Taylor by telephone. The claimant had already been informed of the removal action and was under directive to obtain another representative. During the telephone conversation, Taylor told Chocallo that she did not want another ALJ. Plaintiff retained control of the file and scheduled a further hearing on June 13, 1977. Pursuant to a June 9, 1977 order issued by Chocallo, claimant appeared without her CLS representatives. They had advised her not to appear since the case had been taken from Chocallo and was being reassigned. Taylor appeared with her sister and minister. One of plaintiff's allegations is that CLS failed or refused to represent claimant at this unauthorized hearing. (Complaint ¶¶ 19-24).

On June 21, 1977, defendants Jack H. Roseman and John W. Ennis, both ALJ's, and defendant Claire R. Kuriger, entered Chocallo's locked office in her absence and made a visual inspection for purposes of locating and obtaining the Taylor files. They were unsuccessful. Chocallo retained the files and proceeded to "decide" the claimant's case in her favor, thus mooting a mandamus suit filed in this court by the government to compel her to return the files. (*United States of America v. Wanda P. Chocallo*, No. 77-2437, dismissed as moot). In keeping with the routine practice of relinquishing files in de-

cided cases, she turned the Taylor file over *after* making the decision. *See United States of America v. Wanda P. Chocallo,* E.D. Pa., Civil Action No. 77-2437.

These actions were the primary basis for initiation by the agency of removal charges against plaintiff on June 20, 1977 (Trachtenberg Affidavit ¶ 7).

B. *The Coleman Case*

Plaintiff's second group of allegations arise out of the December, 1975 social security disability hearing of defendant John C. Coleman, a 74 year old blind man whose case was assigned to Chocallo. Chocallo failed to appear at the Coleman hearing allegedly due to illness. His counsel, defendant Linda Bernstein, Esquire, wrote to Chocallo expressing her concern at Chocallo's non-appearance, particularly in light of the resulting inconvenience to Coleman. At the next scheduled hearing, Chocallo accused Coleman of dishonesty and Bernstein of unethical and unprofessional conduct. On December 31, 1975, Bernstein complained in writing to the Chief ALJ of what she regarded as vituperative conduct by Chocallo. As a result of these complaints, Chocallo was counselled by Lightfoot, in his capacity as Regional Chief ALJ, to avoid such confrontations with counsel, which might result in claims of partiality. Lightfoot suggested that plaintiff consider voluntarily recusing herself from the Coleman case. Plaintiff refused to withdraw. The Coleman case was not reassigned, despite the complaints from Bernstein, on the stated presumption that plaintiff could conduct a fair,

impartial hearing and render a just decision. (Complaint, ¶¶ 33 A-Q, X-2).

In late January, May and July, of 1976, Chocallo attempted to schedule supplementary hearings in the Coleman matter. Neither Bernstein nor Coleman appeared, believing that the matter had been concluded on the merits at the December, 1976 hearing.[2]

In September, 1976 nearly nine months after the hearing on the merits, Coleman's attorney Bernstein complained in writing to Chief ALJ Brown about what she considered an inordinate delay in the issuance of a decision. (Brown Affidavit, ¶ 5). Brown gave plaintiff a copy of the Bernstein letter and asked her when the decision would be rendered, advising her that if a date were not given, the Appeals Council would have to review the case and make a decision. Plaintiff promised a decision by the first week in October, 1976. As of November 1, 1976, no decision had been made and Brown requested the Appeals Council to remove and consider the case because of the delay. On November 2, 1976, the Appeals Council informed Brown that a decision adverse to Coleman had been rendered on October 29, 1976. On June

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[2] In early February, 1976, for the purpose of defending a federal class action brought against the Secretary of DHEW, a request was made for the Coleman file by the Office of General Counsel of DHEW through the Assistant Commissioner of the Bureau of Supplemental Security Income. (Gitman Affidavit, ¶¶ 6, 8, Attachment No. 2). All case files involved in that lawsuit had been obtained except the Coleman file which was in the possession of, or under the control of, plaintiff. Despite the stated need of the General Counsel's Office for the file, she refused to surrender it. *Id.*

15, 1977, the Appeals Council reversed and remanded because of demonstrated hostility against the claimant and attorney through the hearing process and the decision itself. The case was then reassigned to another ALJ for decision.

In September, 1977, ostensibly acting as a self-appointed private attorney general endeavoring to attack the validity of the Appeals Council's order of June 15, 1977, Chocallo filed a first amended complaint in this court to add as defendants the Secretary of DHEW and the claimant Coleman.

C. *Denial of Promotion and Lack of Productivity*

On February 29, 1976, Chocallo communicated with David Matthews of DHEW requesting a full investigation into defendants' conduct in the Coleman case. By letter dated April 9, 1976, defendant Robert L. Trachtenberg, Director of the Bureau of Hearings and Appeals, advised Chocallo that he planned to recommend instituting an adverse action against her, and that he felt it improper to reply to her letter which had been referred to him by Matthews. Because of the contemplated adverse action, Trachtenberg decided to withhold Chocallo's promotion which would ordinarily have been effective by operation of law on April 11, 1976. (Trachtenberg Affidavit ¶ 4). On May 25, 1976, Chocallo reported Trachtenberg's actions to the Civil Service Commission which ultimately directed Trachtenberg to initiate retroactive corrective action. The action was taken and Chocallo received a retroactive promotion and backpay. Subsequently, on April

29, 1977, Chocallo was informed by Brown that her production was unacceptably low, and was instructed to increase her out-put within sixty days. Apparently, the "productivity" issue had been raised previously in January, 1976 by Gitman due to a "multitude of complaints" which were filed by persons who had appeared before Chocallo and who complained of delayed decisions. (Gitman Affidavit, ¶10, 11). Ultimately, on May 31, 1977, Gitman addressed a letter to Chocallo requesting her to inform him on a weekly basis of the number of case dispositions. (Complaint ¶ 37). Chocallo asserts that if her productivity was low, it was because she was denied an adequate support staff. (Complaint, ¶ 34).

D. *Denial of Access to Personnel File*

Finally, plaintiff alleges that her rights under the Privacy Act were violated by defendants Trachtenberg, Gitman and Lightfoot who delayed and/or refused to furnish her copies of all records and data concerning her which were in the Bureau's possession. Further, she claims that her Privacy Act rights were violated since defendants collected irrelevant and damaging information, in particular, complaints filed by attorneys and claimants concerning her performance which were disseminated without her knowledge. Based on the above events, plaintiff sues the following group of defendants.

II. The Community Legal Services ("CLS") Defendants

Chocallo claims that various attorneys affiliated with CLS, who represented claimants appearing before her, conspired with the federal defendants to violate her constitutional and statutory rights. The CLS defendants include Linda Bernstein, Esquire, Marjorie Janoski, Esquire, Bartholomew Poindexter, Esquire, Richard Weishaupt, Esquire and Deborah Kooperman, Eileen Wood and Marilyn Davis Weiler, CLS paralegals.[3] It is unclear what constitutional rights were allegedly violated by the CLS defendants. Chocallo appears to claim that she had a constitutional right to be an "independent judge," to continue to hold office (Complaint ¶ 40, 48), and not to be "unlawfully deprived of her liberty to use the powers of her mind, judgment and experience. . ." (Complaint ¶ 48). In addition, Chocallo claims that the public's rights and the rights of claimants in Social Security appeals were

[3] Each CLS defendant is charged with: (1) making "*ex parte*" complaints to Chocallo's superiors concerning her conduct as a hearing examiner, (Compaint ¶ 24, 27, 30, 31); (2) conspiring to prevent her from discharging her duties as a judge (Complaint, ¶ 12) and (3) being "unruly" and "offensive" at hearing before Chocallo (Complaint, ¶ 14). Based on these factual representations, Chocallo claims that her rights under the due process clause of the Fifth Amendment and under 42 U.S.C. §1985 were violated by the CLS defendants. Chocallo also alleges causes of action under the Administrative Procedure Act, 5 U.S.C. §101, *et seq.;* the Social Security Act, 42 U.S.C. §301, *et seq.* and the Privacy Act, 5 U.S.C. §552. Fairly read, however, the complaint does not allege that the CLS defendants violated any of these provisions.

violated. (Complaint, ¶ 41, 43). Based on these allegations, the CLS defendants have moved to dismiss the complaint for failure to state a claim upon which relief can be granted under Fed. R. Civ. P. 12(b)(6). Even accepting all of the well-pleaded facts in plaintiff's complaint as true, I find that the CLS defendants' motion must be granted. Chocallo claims relief under all three sections of 42 U.S.C. §1985 (1976).[4]

I address these claims in reverse order.

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[4] 42 U.S.C. §1985 provides:

(1) If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trusts, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an afficer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder or impede him in the discharge of his official duties;

(2) If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, . . . ; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

Memorandum and Order, No. 77-2310

A. *42 U.S.C. §1985(3)*

To state a cause of action under §1985(3), the plaintiff must show (1) that a federally secured right has been invaded by the defendants, (2) that the defendants conspired to deprive the plaintiff of her rights, and (3) that the defendants' actions were motivated by a "class-based, invidiously discriminatory animus. . . ." *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971). *Waits v. McGowan*, 516 F.2d 203, 208-09 (3d Cir. 1975); *See also Robinson v. McCorkle*, 462 F.2d 111, 113 (3d Cir.), *cert. denied*, 407 U.S. 1042 (1972); *Local No. 1 (ACA) v. I.B.T., C. W. & H.*, 419 F. Supp. 263, 275-77 (E.D. Pa. 1976). " 'Section [1985(3)] provides no substantive right itself; it merely provides a remedy for violation of rights it designates.' " *Marino v. Bowers*, 657 F.2d 1363, 1371 (3d Cir. 1981), (quoting *Great Amerian Federal*

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(3) If two or more persons in any State or Territory conspire . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; . . . in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

Savings & Loan Ass'n v. Novotny, 442 U.S. 366, 372 (1979)).

With respect to the claim of constitutional violations, plaintiff alleges only that her rights to due process and equal protection under the Fifth Amendment were infringed by the actions of the CLS defendants. However, plaintiff alleges no facts that would establish that the CLS defendants violated these rights. Although she alleges that the CLS defendants were obstructive, rude and offensive, that they sought to disqualify her from sitting in certain cases, and that they failed to properly represent certain clients in cases before her, none of these allegations implicates plaintiff's constitutional rights. As a judge, she has no constitutional right to be free from criticism, disqualification, or even ridicule. *Cf. In re Dellinger*, 461 F.2d 389, 400 (7th Cir. 1972). (Attorneys given latitude as vigorous advocates and mere disrespect or insult not necessarily punishable as contempt.) Quite to the contrary, the actions complained of are themselves protected by the First and Sixth Amendments. The CLS defendants are entitled under the Constitution and federal law to criticize plaintiff as a judge and federal official. *See, e.g., Wood v. Georgia*, 370 U.S. 375, 388-91 (1962); *In re Sawyer*, 360 U.S. 622, 632-33 (1959); *In re Oliver*, 452 F.2d 111, 114-15 (7th Cir. 1977). *See also* Canon 7, ABA Code of Professional Responsibility.

Moreover, in particular cases, where the assigned judge may be biased, prejudiced, or predisposed as to the outcome, the attorney may have an obligation to file a motion for disqualification. Indeed, the regulations which control the hearing procedures involving administrative law judges specifically provide for disqualification of

presiding officers. 20 C.F.R. §416.1430. Plaintiff has no constitutional right to be exempted from this provision.

Finally, in the course of representing their clients, CLS attorneys are entitled to make a wide range of tactical and legal decisions, and only the client, and not a third party such as any administrative law judge, has standing to complain that these decisions and actions violate the constitutional rights of the client. *See, e.g., O'Malley v. Brierley,* 477 F.2d 785, 789 (3d Cir. 1973) (litigant may assert only his own constitutional rights or immunities).

The Supreme Court has repeatedly emphasized the importance of protecting the independence of attorneys and ensuring zealous advocacy on behalf of clients under our adversary system of justice. *See, e.g., In re Sawyer,* 360 U.S. 622, 635-36 (1959). *See also In re Dellinger,* 461 F.2d at 400. These principles must be followed with special care with respect to legal service organizations where, because of funding and other considerations, there is a high risk of interference and control by the government or the courts. Fairly read, plaintiff's requests for relief, if granted, would seriously encroach upon the protected activities of the CLS defendants.

It is also clear that plaintiff's complaint fails to satisfy the requirement that defendants' actions be motivated by a class-based, discriminatory animus. Such allegations must allege discrimination against a well defined class, and discrimination that "(1) affects a traditionally disadvantaged group (*e.g.*, 'suspect' classification); (2) is irrational; or (3) unnecessarily burdens plaintiff's exercise of a 'fundamental' right." *Santiago v. City of Philadelphia,* 435 F. Supp. 136, 156 (E.D. Pa. 1977). Plaintiff fails to satisfy any of these standards.

Plaintiff does not allege discrimination based on race, sex, alienage, or any other suspect classification. Nor does she claim discrimination against administrative law judges as a class. Thus, she fails to state a claim under §1985(3).

B. *42 U.S.C. §1985(2)*

The Third Circuit construes section 1985(2) as subdivided into two parts—one part preceding and the other following the semi-colon. *Brawer v. Horowitz*, 535 F.2d 830, 840 (3d Cir. 1976). The second half of section 1985(2), proscribing obstructions of justice having as their object the denial of equal protection of the laws, *Haefner v. County of Lancaster*, 520 F. Supp. 131, 134 (E.D. Pa. 1981), has been construed to require the same class-based, invidiously discriminatory animus as that which has been required under §1985(3). *Brawer*, 535 F.2d at 840. Accordingly, for the reasons stated above, plaintiff's claim under this section must also be dismissed.

The first clause of subsection (2) is aimed at conspiracies to intimidate or pressure witnesses, parties and jurors in the performance of their duties in any court of the United States. *Brawer*, 535 F.2d at 840. This section does not provide judges or others involved in the judicial process, who are not specified in the statute, with any protection. Plaintiff as a judge, does not have standing under this statute to raise the constitutional claims of litigants who appear before her. *O'Malley v. Brierley*, 477 F.2d at 789 (one cannot sue for deprivation of another's civil rights.)

C. *Section 1985(1)*

Section 1985(1) has not been definitively construed by the Third Circuit. However, in a carefully considered opinion, with which I am in agreement, the Seventh Circuit has construed it to consist of four component parts. *Stern v. United States Gypsum, Inc.*, 547 F.2d 1329, 1336 (7th Cir.) *cert. denied*, 434 U.S. 975 (1977). Parts one and two proscribe conspiracies to prevent federal officers, by the use of "force, intimidation, or threat" from holding office or discharging their duties. Also proscribed are conspiracies to induce federal officers to leave a place where their duties must be performed. *Stern*, 547 F.2d at 1336. Here, plaintiff alleges no facts whatsoever to establish conduct by CLS defendants which rises to the level of force, intimidation or threats. The CLS defendants have, as outlined above, merely exercised their statutory and constitutional responsibilities as attorneys and paralegals. Thus, these portions of section 1985(1) are not implicated by the alleged conduct. Parts three and four, however, proscribe conduct which falls short of force, intimidation or threats. Conspiracies to injure a federal officer in his person or property on account of, or during the lawful discharge of his duties are not permitted. Also forbidden are conspiracies to injure his property in order to impede him in the discharge of his duties. Plaintiff presumably claims that the alleged conduct falls within these proscriptions. However, as in *Stern*, the gravamen of plaintiff's complaint against the CLS defendants is that they interfered with the discharge of plaintiff's duties by overzealous advocacy and by filing complaints with her supervisors about the manner in which she per-

formed her duties. I find, as did the court in *Stern,* that section 1985(1) must be read narrowly so as not to implicate these constitutionally protected activities. In *Stern,* the court found that plaintiff, an IRS agent who had sued a corporation and its officers for filing complaints with plaintiff's superiors concerning the performance of duties during an audit, did not state a claim under §1985(1). It found such activity to be protected by the First Amendment since "public criticism of governmental policy and those responsible for government operations is at the very core of the constitutionally protected free speech area," *Stern,* 547 F.2d at 1342, and "presenting complaints to responsible government officials about the conduct of their subordinates with whom the complainer has had official dealings is analagously central to the protections of the right to petition." *Id.* at 1342-43. The court found it irrelevant that the exercise of this right may cause professional injury to the official in question. Nor was it relevant that the complainant may be aware of, and desire, such injury to occur, at least when the complaints are lodged through the proper and established channels. *Id.* at 1343. Likewise, in this case, the CLS defendants have merely exercised their statutory and constitutional responsibilities as attorneys and paralegals, as outlined above. They have not, as a result, deprived plaintiff of any federally secured right under section 1985(1).

D. *The Fifth Amendment*

It appears that any authority for a direct cause of action under the Fifth Amendment derives from *Bivens v.*

Six Unknown Agents, 403 U.S. 388 (1971). However, two fundamental requirements must be satisfied before a *Bivens* cause of action can be stated. First, the plaintiff must be deprived of a constitutionally protected right under the specific Amendment; second, the defendants' actions must have been taken under color of law. *Bivens*, 403 U.S. at 392-397. As indicated, there is no showing that the CLS defendants did anything illegal to plaintiff. Consequently, they have deprived her of no constitutionally protected right and her claim directly under the Fifth Amendment must also fail.

III. Defendant John C. Coleman, Social Security Claimant

Plaintiff filed an amended complaint on August 15, 1977 (Docket Entry No. 5) wherein John C. Coleman is named as a defendant. In that complaint, plaintiff protests an Order of the Appeals Council removing Coleman's case from her and reassigning it to another administrative law judge. Coleman moved to dismiss, asserting that the complaint fails to state a claim against him. I agree. A review of the amended complaint fails to disclose any allegation as to any actions taken by Coleman, acting independently of his attorney, that were directed against plaintiff. To the extent that Coleman is involved, it is only through his attorney against whom the action has been dismissed for failure to state a claim. Thus, the action against Coleman, the client, must be dismissed for the same reasons.

IV. Defendant, Joseph Califano Former Secretary of DHEW

In the same August 15, 1977 amended complaint, plaintiff sued the Secretary of DHEW complaining that the Appeals Council's removal and remand order in the Coleman case was contrary to the applicable provisions of the Administrative Procedure Act, and in violation of rights guaranteed under the Fifth Amendment. Although not stated, it is apparent that Califano was sued in his official capacity. Plaintiff requested this court to direct the Secretary to overrule the Appeals Council and to adopt, as his own, her decision denying Coleman benefits. Califano moved to dismiss plaintiff's complaint for failure to state a claim against him. I agree that dismissal is proper because plaintiff lacks standing to challenge the action taken by the Appeals Council. To have standing, plaintiff must demonstrate both that (1) "the challenged action has caused [her] injury in fact, economic or otherwise," and (2) that the interest sought to be protected is "arguably within the zone of interests to be protected by or regulated by the statute or constitutional guarantee in question." *Association of Data Processing Service Organization, Inc. v. Camp*, 397 U.S. 150, 152-53 (1970). Plaintiff completely fails to establish either element.

Plaintiff cannot show that she was deprived of any legally protected interest by the Appeals Council Order of June 9, 1977, according Coleman a new hearing before another administrative law judge. As a presiding officer assigned to determine the eligibility of a claimant for supplemental social security benefits, the plaintiff had a statu-

tory obligation to decide, without prejudice, the merits of the case before her. 5 U.S.C. §556(a). Any partiality on the part of the presiding officer in a pending matter requires disqualification. Social Security Administration regulations, 20 C.F.R. §416.1430 provide in pertinent part:

> *§416.1430 Disqualification of pending officer.*
>
> No presiding officer shall conduct a hearing in a case in which he is prejudiced or partial with respect to any party, *or where he has any interest in the matter pending for decision before him.* (Emphasis added).

Plaintiff, therefore, could not properly have any interest in the claim before her. Consequently, as a matter of law, plaintiff has no interest in the outcome of Coleman's claim.

Even if she did have standing, plaintiff has no basis upon which to challenge the propriety of the Appeals Councils' action in the *Coleman* case. Her complaint is that Califano, through the Appeals Council, lacked authority to vacate her decision in the *Coleman* case and remand it to another ALJ because (1) it is illegally constituted as a review body, and (2) it was not authorized by statute or regulation to remove the case from her or to reassign it to another ALJ. The former argument was raised in plaintiff's removal proceedings held before Judge McCarthy. After conducting a full evidentiary hearing, Judge McCarthy concluded that this argument was meritless.[5]

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[5] Judge McCarthy found unpersuasive Chocallo's argument that sections 205(g) and (k) of the SSA, 42 U.S.C. 405(g) and (h), prohibit review of a "presiding judges'" decision by any

Judge McCarthy's findings were affirmed by the Merit System Protections Board (MSPB), *In re Wanda Chocallo,* MSPB Memorandum Opinion and Order dated March 20, 1980 which was in turn affirmed by the United States District Court. *Chocallo v. Prokop,* C.A. No. 80-1053 (D.D.C. October 10, 1980).

Collateral estoppel, thus, applies to bar plaintiff's relitigation of this issue. "Once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive on subsequent suits based on a different cause of action involving a party to the prior litigation." *Montana v. United States,* 440 U.S. 147, 153 (1979). In addition, the party to be precluded from relitigating the issue must have had a full and fair opportunity to contest the issue. *Id.* Collateral estoppel also applies to administrative proceedings where an administrative agency acts in a judicial capacity to resolve disputed issues of fact which the parties have had a full opportunity to litigate. *United States v. Utah Construction & Mining Co.,* 384 U.S. 394, 422 (1966). Since a full evidentiary hearing was held before Judge McCarthy on

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person, agency or tribunal except the federal district court. To the contrary, he found that these sections refer only to the decisions of the "Secretary" and contain no mention of a "presiding judges" decision. He found that plaintiff's assumption that she is "the Secretary" since an ALJ has delegated authority to render decisions, ignores the fact that the Appeals Council also has delegated authority to review these decisions. *See* 20 C.F.R. §416.-1459-61 (regulation assigning review functions to Council). He found that section 205 of the APA, 42 U.S.C. §405, does not preclude a delegation of authority to an ALJ to make findings and a decision, subject to review by an appeals council before these decisions become final and binding.

the issue of whether the Appeals Council is a legally constituted review board, it is appropriate to apply collateral estoppel to this issue.[6]

Plaintiff's second argument that Califano, through the Appeals Council, was not authorized by statute or regulation to remove the Coleman case, is without merit. Under 20 C.F.R. 416.1461 a party to a hearing may request review by the Appeals Council of a decision issued by an ALJ. After review, the Appeals Council may affirm, modify, reverse or remand the case to a presiding officer. 20 C.F.R. §416.1467-68. These regulations were strictly followed in Coleman's case. On November 19, 1977 he requested review, which was granted. The Council found that he had been denied a fair hearing and it accordingly vacated and remanded the case to another ALJ. Thus, the Council's order in the Coleman case was consistent with the applicable regulations.

For these reasons, plaintiff's complaint against former Secretary Califano must be dismissed.

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[6] Plaintiff argues that the defense of collateral estoppel was waived since it was not raised until the federal defendants filed renewed motions to dismiss raising the collatral estoppel issue. The collateral estoppel issue was briefed pursuant to my order. I do not find the waiver argument persuasive. Plaintiff's argument that all defenses must be asserted initially or be deemed waived misconstrues Fed. R. Civ. P. 12(b) which provides that certain enumerated defenses, not including collateral estoppel, must be raised in the *responsive pleading*.

Memorandum and Order, No. 77-2310

V. Federal Defendants, John W. Ennis, Jack Roseman and Claire Kuriger

In a second amended complaint filed in September, 1977 plaintiff named as additional defendants ALJ's John W. Ennis and Jack Roseman, the Bureau of Hearing and Appeals, SSA and Claire Kuriger, secretary to original defendant James C. Lightfoot, who was the ALJ in charge of the Philadelphia office through which plaintiff received her case assignments. These three defendants have been sued in both their official and individual capacities. Chocallo charges violations of her Fourth Amendment rights by virtue of their search of her office during her absence on June 21, 1977 to secure the Taylor files and tapes. All three defendants move to dismiss. In view of the affidavits submitted by both sides, the court shall treat defendants' motion to dismiss as a motion for summary judgment. Federal Rule of Civil Procedure 56(c) provides that summary judgment may be granted when there are no genuine issues of material fact and judgment as a matter of law is appropriate. Applying these standards to the undisputed facts as set forth below, I find that summary judgment must be granted in favor of defendants Kuriger, Ennis and Roseman.

Pursuant to the Appeals Council order of June 9, 1977, the Taylor matter was remanded to the Philadelphia Regional Office with direction to reassign the case to another ALJ. Acting on instructions from his superiors, the Assistant Regional Chief ALJ for Region III (Philadelphia) Sol Gitman, served on plaintiff copies of the order and made an oral demand for the Taylor file. (Gitman Affidavit, ¶ 15). Plaintiff does not deny that she told

Gitman, and defendants Lightfoot and Ennis who were also present, that she did not have the file and that even if she did, she would not surrender it. (*Id.;* Plaintiff's Reply to Gitman's Affidavit, ¶ 15). Plaintiff admits that later on the same morning Gitman served her with a written memorandum directing her to surrender the Taylor file pursuant to the order of the Appeals Council and that she did not comply.

On June 21, 1977, eleven days later, the Taylor file still had not been turned over by plaintiff nor had its whereabouts been made known. In the absence of Lightfoot, who was then on vacation Ennis was Acting Administrative Law Judge in charge of the Philadelphia office. On that day he had been instructed orally by Gitman to obtain the Taylor file from the locked office of plaintiff. (Ennis Affidavit, ¶ 5). Plaintiff had been out of the Philadelphia office since June 14, 1977, and her whereabouts were not known to Gitman. She remained absent through June 23, 1977. Acting on Gitman's directive, Ennis proceeded to plaintiff's office to obtain the file. He was accompanied by defendant Roseman, ALJ Morris Chernock, and defendant Kuriger. Also present outside the office was Nancy Parkinson, plaintiff's hearing assistant. (Ennis Affidavit, ¶ 6).

According to Ennis he obtained the key to the office from Kuriger, the Regional Chief ALJ's secretary, who kept office keys, then unlocked and opened the door in the presence of the above named witnesses. Ennis gave Kuriger instructions to enter the office and to make a visual inspection of plaintiff's desk and table for the Taylor file, but not to open any drawers or file cabinets. While the witnesses remained outside the open door and

observed, Kuriger entered and made a visual inspection. According to Ennis, she followed these directions to the letter, spending two or three minutes looking but not locating the file, and then exiting the office without touching, disturbing, or removing any item from the office. Ennis then closed and locked the door in the presence of the same witnesses.

Plaintiff alleges in her reply that her secretary Parkinson told her that her office was broken into while plaintiff was out of the office and that a new lockset had been installed. Plaintiff's Reply Affidavit, ¶6. The statement attributed to Parkinson is hearsay, inadmissible under any exception to that rule and must, therefore, be disregarded. Notably, there is no affidavit from Parkinson. Plaintiff's assertion that her office was in a privately owned building is not material since her office space was government owned or leased. Neither do I find it material that she may have installed her own lock on the government door. There is a strong argument that once installed, it became the property of the government as lessee. In any event, these allegations obscure the central inquiry which is whether plaintiff had a "reasonable expectation of privacy," which was violated by defendants' conduct. While there are clearly circumstances under which an individual may have a reasonable expectation of privacy in her office and its contents, *Gillard v. Schmidt*, 579 F.2d 825, 829 fn.1 (3d Cir. 1978) such circumstances are not present here. Under the exceptional facts of this case, plaintiff could have no reasonable expectation of freedom from a perusal of government office space to ascertain the whereabouts of a file which she admittedly possessed but persistently refused to relinquish. (*See* Plaintiff's Reply Affida-

vit ¶ 6). *United States v. Nasser*, 476 F.2d 1111, 1123 (7th Cir. 1973) (work related warrantless search upheld).[7] Without question, the sole purpose of the search here was work related and reasonably foreseeable by plaintiff who had refused the active efforts of her supervisors to locate and recover the Taylor file, which was government property.[8] By the June 9, 1977 order of the Appeal's Council, the *Taylor* case had been remanded with instructions to reassign it. Chocallo admittedly refused to turn over the file and at the time of the search had improperly retained the file for eleven days. Under these circumstances, I do not find that defendants' actions in entering and searching her office to obtain the *Taylor* file amounted to a violation of plaintiff's Fourth Amendment rights. Accordingly,

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[7] The Third Circuit's decision in *Gillard v. Schmidt*, 579 F. 2d 825 (3d Cir. 1978) is not contrary to the rule set forth in *Nasser* that a public employer may search an employee's office when the search is "work-related." In *Gillard*, a Fourth Amendment violation was held to be alleged where a school board member made a search of guidance counselor's desk containing sensitive student records, since the counselor had a reasonable expectation of privacy. *Id.* at 828. However, the court specifically declined to consider the force of precedents such as *Nasser*, since there was no evidence that the employer in *Gillard* was seeking to recover government property. *Id.* at 829 n.1. Here, by contrast, defendants sought merely to obtain a file which was being improperly retained by Chocallo for official use.

[8] Plaintiff's refusal to relinquish the file led to a mandamus action against her. *United States v. Wanda P. Chocallo*, E.D. Pa. Civil Action No. 77-2437. It is obvious why plaintiff refused to give up the file on June 10 and thereafter. She had scheduled and was intent on holding an unauthorized hearing in the Taylor case.

the actions against defendants Ennis, Roseman and Kuriger must be dismissed for failure to state a claim.

VI. Defendant Bureau of Hearing and Appeals

To the extent that plaintiff sues the Bureau of Hearing and Appeals claiming damage liability, the doctrine of sovereign immunity applies to bar her claim. Such a suit constitutes an action against the United States as to which it has not waived its immunity. *See City of Whittier v. United States Department of Justice*, 598 F.2d 561, 562 (9th Cir. 1979); *Midwest Growers Co-op Corp. v. Kirkemo*, 533 F.2d 455, 465 (9th Cir. 1976) (quoting *Blackmar v. Guerre*, 342 U.S. 512, 515 (1952).)

VII. Federal Defendants, Trachtenberg, Gitman, Lightfoot, Brown

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Chocallo sues Robert L. Trachtenberg, Director of the Bureau of Hearings and Appeals, Philip T. Brown, Chief ALJ, Sol R. Gitman, Regional Chief ALJ, James C. Lightfoot, ALJ in charge of the Philadelphia office and James B. Cardwell, Commissioner of the Social Security Administration, alleging violations of 42 U.S.C. §1985, the Fifth Amendment Administrative Procedure Act (5 U.S.C. §101 *et seq.*); the Social Security Act of 1936, as amended, 42 U.S.C. §405(g) and (h), and the Privacy Act of 1974, 5 U.S.C. §552A(g)(1). As against these defendants, Chocallo claims a conspiracy *inter se* and with the

CLS defendants to destroy her integrity, efficacy and independence as an ALJ. Because matters outside the pleadings have been submitted by both parties, the motions to dismiss will be treated as motions for summary judgment. The various claims as to these defendants are set forth separately.

A. *42 U.S.C. §1985 and Fifth Amendment*

Basically, plaintiff asserts that defendants Gitman, Brown, Trachtenberg and Lightfoot violated her rights under 42 U.S.C. §1985 and the Fifth Amendment by contributing to and participating in the events leading to the removal and remand of the *Taylor* and *Coleman* cases. Defendant Brown allegedly: (1) received and acted upon Stein's letter requesting removal in the *Taylor* case; (2) received and acted upon Bernstein's letter complaining of Chocallo's conduct of the *Coleman* case; (3) wrote to Chocallo on March 10, 1977 asking her to resolve her differences with Stein and petitioned the Appeals Council to vacate the *Taylor* order and remand the case for reassignment; (4) wrote to Chocallo informing her of his intention to have her decision in *Coleman* reviewed and ultimately petitioned the Appeals Council to remand the *Coleman* decision; and (5) wrote to Chocallo asking her to increase her production.

As to defendant Gitman, the complaint alleges that he (1) received Stein's letter in the *Taylor* case; (2) participated in obtaining the *Taylor* files from Chocallo; (3) solicited complaints about plaintiff from CLS attorneys; (4) met with Chocallo to discuss her productivity and her

conduct of the *Coleman* case; and (5) asked Chocallo to inform him of her case dispositions on a weekly basis.

Defendant Lightfoot allegedly: (1) participated in obtaining the *Taylor* files; (2) solicited complaints from CLS attorneys; (3) received and acted upon Bernstein's letters regarding plaintiff's conduct of the *Coleman* case; and (4) did not assign her cases from January, 1976 to October, 1976 and from February, 1977 on, due to her low productivity.

Defendant Trachtenberg allegedly: (1) received Gitman's letter requesting her removal in the *Taylor* case; (2) ordered Gitman and Lightfoot to obtain the *Taylor* file; (3) received her complaints in the *Coleman* case; (4) attacked her low productivity; (5) instituted the adverse action seeking her removal; and (6) improperly denied her a promotion.

Assuming arguendo that the conduct alleged against each defendant violates a cognizable interest under either 42 U.S.C. §1985 or the Fifth Amendment, each of these defendants is entitled to immunity.

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1. Absolute Immunity

All of the claims asserted against defendants Gitman, Brown and Lightfoot pursuant to §1985 and the Fifth Amendment arise from actions undertaken in their capacity as Administrative Law Judges. These defendants properly assert that they are immune from suit for monetary damages under the Fifth Amendment. *Butz v. Economou*, 438 U.S. 478 (1978). In *Butz*, the Supreme Court held

that persons performing adjudicatory functions within a federal agency are entitled to absolute immunity from damage liability for their judicial acts. *Id.* at 514. This immunity applies as well to suits brought under the Civil Rights Act, here section 1985. *See Ross v. Meagan*, 638 F.2d 646, 649 n.2 (3d Cir. 1980). In the parallel context of absolute immunity for judges, the Supreme Court has stated that the essential inquiry in determining whether such immunity attaches is whether, at the time the judge took the challenged judicial action, he had jurisdiction over the subject matter before him. *Stump v. Sparkman*, 435 U.S. 349, 356-57 (1978). "A judge will not be deprived of immunity because the action he took was in error, was done maliciously or was in excess of his authority, rather, he will be subject to liability only when he acted in the 'clear absence of all jurisdiction.'" *Id.* at 356-57 (quoting *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 351 (1872)).

It is clear that none of the judicial acts complained of were done "in the clear absence of all jurisdiction." Plaintiff's averments relate solely to actions regarding case assignments, the removal and remand of cases, and the supervision of plaintiff. All of these actions are encompassed within the description of defendants' responsibilities and duties, as set forth in their affidavits. A second pertinent inquiry is whether defendants' acts were "judicial acts," so that they fall within the zone of protected activity. Whether an act is a judicial act depends upon (1) whether it is a function normally performed by a judge and (2) whether the parties dealt with the judge in their judicial capacity. *Sparkman*, 435 U.S. at 361-62. The actions alleged here are all functions normally per-

formed by the Chief Administrative Law Judge, the Regional Administrative Law Judge and the Administrative Law Judge in charge of the Philadelphia office, as evidenced by their respective position descriptions. Further, it is clear that plaintiff dealt with these defendants at all times in their judicial capacities. Under the controlling cases, they are immune from liability for damages under §1985 and the Fifth Amendment.[9]

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2. Qualified Immunity

As to defendant Trachtenberg, the Director of the Bureau of Hearings and Appeals, a defense of qualified immunity applies to bar plaintiff's claims for damages arising out of the performance of his duties. At all relevant times, Trachtenberg was acting within the scope of his authorized duties as Director. In that capacity, he was a public official who was charged with the performance of duties involving the exercise of discretion. As such, he is entitled to a qualified immunity from liability in a suit for damages arising from unconstitutional action. *See Harlow v. Fitzgerald*, 50 U.S.L.W. 4815 (U.S. June 24, 1982); *Butz v. Economou*, 438 U.S. 478 (1978). The Supreme Court has recently held that to be entitled to this

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[9] While the absolute immunity doctrine may not extend to suits for injunctive relief, without deciding this issue, I find that plaintiff's claims for injunctive relief have been rendered moot by her removal from office, which the United States District Court for the District of Columbia affirmed in Chocallo v. Prokop, Civil Action No. 80-1053 (D.D.C. October 10, 1980). *See* DeFunis v. Odegaard, 416 U.S. 312 (1974).

immunity, a government official must establish that he acted in good faith. *Harlow v. Fitzgerald,* 50 U.S.L.W. at 4819. That is, his conduct must not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Id.* at 4819. In *Harlow v. Fitzgerald,* the court specifically found that "reliance on the objective reasonableness of an official's conduct, as measured by reference to clearly established law, should avoid excessive disruption of government and permit the resolution of many insubstantial claims on summary judgment." *Id.* at 4820. Thus, if the affidavit of Trachtenberg establishes that he acted in good faith, in accordance with the above definition, he is entitled to assert the defense of qualified immunity.

One of plaintiff's principal allegations against Trachtenberg is that he recommended removal action be undertaken against her. Plaintiff contends this action was initiated by Trachtenberg in bad faith. While it is true that Trachtenberg did recommend adverse action, in view of the final judicial decision affirming the removal action, it cannot be said that the recommendation was without some legitimate foundation or justification. Nor can it be said that Trachtenberg acted in violation of plaintiff's clearly established statutory or constitutional rights.

Plaintiff's other major contention is that Trachtenberg deliberately and intentionally deprived her of a promotion for a period of approximately five months. Plaintiff had been appointed as an Attorney Examiner or Hearing Examiner SSI GS-905, and not an administrative law judge under 5 U.S.C. §3105. An Act of Congress, P.L. 94-202 approved January 2, 1976, authorized the Secretary of DHEW to treat hearing examiners as temporary adminis-

trative law judges until December 31, 1978. Under this Act, the examiners could hear social security claims under Titles II, XVI and XVIII of the Social Security Act as though they were qualified and appointed under 5 U.S.C. §3105. On March 3, 1976, the Secretary of DHEW delegated to Trachtenberg, as Director of Hearings and Appeals, the task of implementing P.L. 94-202. Immediately, plaintiff and other persons holding appointments as hearing examiners became Temporary Administrative Law Judges. On April 6, 1976, Trachtenberg advised plaintiff of his intention to recommend that adverse action be taken against her. Although plaintiff had been designated for a promotion effective April 11, 1976, the papers were not processed because of the adverse charges pending against her. On May 26, 1976, defendant advised plaintiff that an increase to a higher grade was not appropriate because an adverse action against her had been recommended. Plaintiff was informed that a promotion would not only be inconsistent with the adverse charges stemming from her refusal to turn over the Coleman file in February, 1976, but would also jeopardize the integrity of the adverse action. Plaintiff complained to the Civil Service Commission on May 25, 1976, which ruled on July 8, 1976, that the denial or suspension of the promotion to a higher grade was contrary to pertinent regulation 5 C.F.R. 930.204. Plaintiff then promptly received the grade increase and a retroactive lump sum payment.

The Civil Service Commission ruled that since the classifications of all ALJ's were being upgraded, incumbents were entitled to the grade increase without regard to merit. In effect, the Commission ruled that the increase was not intended to reflect a "promotion" in the

commonly understood sense but rather an "across the board" increase for all such positions. Plaintiff lost no pay as the result of her successful grievance filed with the Civil Service Commission.

Plaintiff's allegation against Trachtenberg with respect to the promotion issue is that he acted maliciously, willfully and intentionally (Complaint, ¶ 44); not that he acted in violation of a limitation placed upon his conduct by the Constitution or by statute. There is no doubt that Trachtenberg had authority to recommend adverse action for actions of a subordinate which were deliberate impediments to the execution of his delegated authority. Although he erred in not processing plaintiff's promotion or grade increase because of the pendency of adverse action, believing a promotion to be inconsistent with the proposed discipline, it cannot be said that by so doing he acted in violation of plaintiff's clearly established statutory or constitutional rights. A review of the uncontested portions of the record shows that the object of Trachtenberg's action was to recommend effective disciplinary action. It was not to construe the application of wage increases for all Temporary Administrative Law Judges. He communicated to plaintiff through the Personnel Department that the basis for her non-promotion was discipline related. The final administrative decision on the question as to whether plaintiff was entitled to a promotional increase did not rest with Trachtenberg but rather with the Civil Service Commission. Very simply, I find that Trachtenberg's actions with regard to plaintiff's promotion were taken in "good faith." He reasonably believed that where an adverse action was to be instituted, it was improper to grant plaintiff a promotion. The Com-

mission later determined that he erred. However, under the circumstances, it cannot be said that plaintiff's statutory right to a promotion was so clear that Trachtenberg's withholding of it rose to the level of "bad faith."

Finally, plaintiff contends that Trachtenberg's recommendation for the adverse action initiated in June, 1977 was violative of her constitutional rights in that she was harassed and retaliated against for exercising quasi-judicial independence. This argument fails. Plaintiff's contention is premised upon the wholly erroneous assumption that she could resist lawful directives of the Appeals Council in the *Taylor* and *Coleman* cases. Plaintiff defied this directive at her own risk, including the risk of adverse action for deliberate insubordination. That being the case, plaintiff cannot be heard to argue that Trachtenberg violated her constitutional rights by the institution of removal proceedings.

B. *Social Security Act*

As to the federal defendants, plaintiff also asserts that they acted in violation of sections 205(g) and (h) of the Social Security Act, 42 U.S.C. §405(g) and (h) (1976). She asserts, in essence: (1) her social security decisions are not reviewable by any entity other than the federal district court (Amended complaint, ¶ 56); (2) The Appeals Council was without authority under the statute and regulations to review her decision in the *Taylor* case and (3) the Appeals Council was without authority to remand the *Coleman* case. Plaintiff is barred by principles of collateral estoppel from relitigating the first issue here, since

it was fully and fairly litigated before Judge McCarthy in plaintiff's removal proceedings. *See* text accompanying notes 5-6, *supra*. Collateral estoppel also bars relitigation of the second issue. Judge McCarthy fully addressed the issue of whether the Appeals Council had statutory authority to review and remand her *Taylor* order and concluded that it had such authority. Plaintiff's final contention, that the Council lacked authority to review and remand the *Coleman* case, is without merit, as discussed *supra*. *See* 20 C.F.R. §416.1467-68. Accordingly, summary judgment is granted in favor of the federal defendants on these claims.

VIII. Privacy Act Claims

Plaintiff complains that the Bureau and individual officials including James B. Cardwell, Commissioner of the Social Security Administration, violated the Privacy Act of 1974, 5 U.S.C. §§552a(e), by secretly collecting information about her that was not relevant and necessary to carry out lawful operations and functions and by disseminating this information without her knowledge or consent and to her detriment. (Complaint, ¶ 45-48). The gravamen of the complaint is that the Social Security and Bureau defendants solicited, received and retained in the *Bureau's* records, the complaints of "attorneys and other individuals" about plaintiff and that these complaints may be exposed to potential employers.

Plaintiff has not specifically alleged what "complaints" she is referring to, even though these records were made available for her inspection. (Declaration of Peter

James Kurapka, ¶ 5, Exhibit F). These vague and unsupported allegations do not give defendants fair notice of the wrongs with which they are charged. Plaintiff has not indicated what documents, if any, were improperly collected and disseminated. Nor has she indicated the manner in which defendants collected such data. This alone, provides a basis for dismissal of these complaints. *See, e.g., Harper v. United States,* 423 F. Supp. 192, 196 (D.S.C. 1976). However, even assuming that plaintiff charges defendants with receiving and retaining complaints made by CLS attorneys on behalf of their clients, I do not find from the undisputed facts that there was any violation of Privacy Act, 5 U.S.C. §502(e). The statute proscribes the collection of irrelevant information which is not necessary to accomplish a purpose of the agency. Clearly, letters written by attorneys appearing before Chocallo, which criticized her conduct are "relevant and necessary" within the meaning of the statute. They certainly are relevant to a determination of whether plaintiff was adequately and properly performing her duties as an ALJ. Thus, I find no violation of this section of the Privacy Act.

Plaintiff also complains that her rights under the Privacy Act were violated when defendants failed to respond to her request for all records pertaining to her maintained by the Bureau. I find no violation of the Act because her request was answered specifically. By letter dated May 25, 1977, plaintiff was advised by the Bureau that there existed and were available for her inspection, an official personnel file and a correspondence file. She was informed that these contained correspondence between her and various Bureau officials, production rec-

ords, pay, leave and attendance records and an employee record extension file. (Declaration of Peter Kurapka, ¶ 5, Exhibit F thereto). Not satisfied with that response, plaintiff filed an appeal to the Secretary through Cardwell. The appeal was denied because not only had plaintiff been given the records, but she did not then complain that access to the records was denied. Thereafter on November 16, 1977, plaintiff made a request for information pertaining to the work activities of other ALJ's. On January 3, 1978, the Bureau made a specific reply identifying documents in response to the request and notifying her of their availability for copying and inspection. (Declaration of Kurapka ¶ 10—Exhibit K thereto).

Plaintiff seeks damages against the individual defendants for "willful and intentional withholding of the requested data in plaintiff's files. . . ." Complaint, ¶ 15, p. 26. Any liability for a violation of the Privacy Act rests solely upon the agency and not the individuals. *Bruce v. United States*, 621 F.2d 914, 916, n.2 (8th Cir. 1980). Therefore, plaintiff's actions against them must be dismissed. Defendants argue that in cases such as this, the only remedy available to plaintiff would be injunctive relief. 5 U.S.C. §552(g) (1) (3) (A). Clearly, there is no basis for injunctive relief here since plaintiff does not contend that the agency has withheld the requested information. She claims merely that defendants engaged in dilatory tactics. Even if plaintiff is entitled to a claim for statutory damages, 5 U.S.C. §552(g) (1) (4), she does not meet the statutory requirement that she prove "intentional and willful" conduct by the agency. There is simply no evidence of record that the agency acted in such a manner. The correspondence between the parties demonstrates that

the agency attempted to comply promptly with plaintiff's request. Within two (2) weeks of plaintiff's request, the agency informed her of its need for more specific identifying information in order to comply with her request. Her subsequent letter to Trachtenberg on May 5, 1977 was referred to the agency for action and within three weeks she was informed of the records regarding her which were maintained by the Bureau. These facts, very simply, do not demonstrate the "intentional and willful" conduct which is required by the Act before liability for statutory damages attaches. Thus, summary judgment is granted in favor of the Bureau on plaintiff's Privacy Act claims against it.

D. *Productivity Requirement, Case Assignments and Peer Review Program*

Plaintiff asserts that defendant imposed upon her certain requirements in violation of the Administrative Procedure Act. While the APA may confer a qualified right of decisional independence upon ALJ's, *Nash v. Califano*, 613 F.2d 10, 15 (2d Cir. 1980), I do not find this right to have been violated by the practices of which plaintiff complains. The gravamen of her complaint is that defendants, in particular Brown, Gitman, Trachtenberg and Lightfoot complained at various intervals about plaintiff's productivity. For example, on February 17, 1976, the Chief Administrative Law Judge, Phillip Brown, "earnestly" requested plaintiff to take steps to increase her productivity. (Complaint, Exh. H-88). Then, on April 6, 1976, he asked her, as he had asked other ALJ's, to report the disposition of cases and the number of hearings held

on a weekly basis. (Brown Affidavit, ¶ 14). Plaintiff, in her reply to Brown's affidavit, does not state that there was a production requirement, but rather a *reporting* requirement. No penalty was attached to her failing to reach a quota. Therefore, there was no quota system imposed on plaintiff. Merely requesting ALJ's to account administratively to the Chief ALJ for the fullfillment of their assignments cannot constitute a constitutional violation nor a violation of the APA, to the extent that it recognizes a qualified right of decisional independence of ALJ's.

Plaintiff also asserts that she was not assigned cases on a rotational basis during certain periods. Presumably, plaintiff alleges that this violates the APA, 5 U.S.C. §3105 which provides that "Hearing examiners shall be assigned to cases in rotation so far as practicable . . . ." The statute expressly limits any "right" to be assigned cases on a rotational basis by providing the qualifying language "so far as practicable." Here the affidavit of James C. Lightfoot sets forth circumstances which indicate that in plaintiffs case, assignment on that basis was not practicable. He explained that Chocallo was appointed as a temporary judge and thus was not authorized to hear and dispose of the full range of cases. In addition, as a result of the tremendous backlog of cases, individual judge's dockets are examined to attain equitable caseloads, so that a judge will not be overloaded. Care is also taken to assure that judges are not given an inordinate number of out-of-city assignments. Lightfoot asserts that Chocallo was assigned cases according to these guidelines, and Chocallo has not come forward with evidence to suggest otherwise.

Finally, she asserts that the imposition of a "Peer Review Program" upon all ALJ's, including her, violated her right to decisional independence under the SSA, APA, and violated unspecified constitutional rights. She seeks an injunction against the continued implementation of this program by defendants. Her claim of constitutional violation is without merit. Any right to decisional independence on the part of an ALJ is a matter of statutory right. As to the claim of statutory violations, she attacks the Peer Review Program only in an abstract manner. Such a system is not necessarily violative of the APA and SSA. However, plaintiff does not allege that this Review System actually infringed upon her decisional independence. Thus, she has failed to even state a claim. In any event, her individual claim for injunctive relief vis-a-vis the Peer Review Program has been rendered moot by her removal from office, which the United States District Court for the District of Columbia found was supported by substantial evidence in *Chocallo v. Prokop*, Civil Action No. 80-1053 (D.D.C. October 10, 1980). *See DeFunis v. Odegaard*, 416 U.S. 312 (1974).

For the foregoing reasons, plaintiff's claims against all federal defendants are dismissed.

An appropriate order follows.

ORDER

AND NOW this 8th day of October, 1982, it is hereby ORDERED that the defendants' Motions to Dismiss, or in the Alternative, Motions for Summary Judgment are GRANTED. Judgment is hereby entered in favor of all defendants and against plaintiff.

By the Court:
(s) James T. Giles
J.

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 77-2310

WANDA P. CHOCALLO

v.

BUREAU OF HEARINGS AND APPEALS, SSA and ROBERT L. TRACHTENBERG, Director, Bureau of Hearings and Appeals, SSA, HEW et al.

Jury Trial Demanded

Filed: July 1, 1977

COMPLAINT

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1. Plaintiff is an adult female citizen of the United States and resides at 308 Maple Avenue, Drexel Hill, Pennsylvania 19026. She is an attorney and is employed as an Administrative Law Judge by the Bureau of Hearings and Appeals of the Social Security Administration, an independent agency within the Department of Health, Education and Welfare. She has been employed by the Bureau since July 22, 1974.

2. This action arises under the Civil Rights Act of June 25, 1948, c. 646, 62 Stat. 932, as amended, Title 28 USC section 1343; Title 42 USC section 1985; the Fifth Amendment of the Constitution of the United States; the Administrative Procedure Act, P.L. 89-554, Sept. 6, 1966, 5 USCA 101 et seq.; the Social Security Act of 1936, as amended, and the Privacy Act of 1974, P.L. 93-579, 88 Stat. 1897, 5 USC 552(a) (g) (1).

3. Defendants are the Bureau of Hearings and Appeals of the Social Security Administration and the following employees thereof: Robert L. Trachtenberg, Director, with offices at the Bolton Tower #2 Building, 301 N. Randolph St., Arlington, Virginia; Philip Brown, Chief Administrative Law Judge, Tower #2 Building, 801 N. Randolph St., Arlington, Virginia (both of whom are citizens of the State of Virginia); Sol R. Gitman, Regional Chief Administrative Law Judge, Region III, with offices at the Gateway Building, 3636 Market Street and 1528 Walnut St., Philadelphia, Pa., and James C. Lightfoot, Administrative Law Judge in Charge, Philadelphia Office, with offices at 1528 Walnut Street, 10th Floor, Philadelphia, Pa.

4. All of the defendants named in Paragraph 3 hereof are ministerial officers within the Bureau whose powers and responsibilities are circumscribed by law and are limited to administrative and management functions. They are required to fastidiously observe the limitations on their powers and, pursuant to Section 551 of 5 USC, the Administrative Procedures Act, are required to follow Congressional mandates whether explicit or ascertainable as inherent in underlying policy and are precluded from giv-

ing effect to their own notions as to what is wise, just or politic with respect to the quasi-judicial functions of the administrative law judges passing upon Bureau cases. Said defendants are being sued in their official capacity as ministerial officers and in their individual and private capacity as well, jointly and severally.

5. Defendant, James B. Cardwell, is sued in his official capacity as Commissioner of Social Security, an agency within the Department of Health, Education and Welfare. In this capacity he has been designated by the Secretary of Health, Education and Welfare, in regulations published on October 8, 1973, 40 Fed. Reg. 47412, to implement the provisions of The Privacy Act of 1974 as the individual to decide appeals by persons who have been denied access to their records by officials of the Social Security Administration.

6. Defendants, Community Legal Services, Inc., is an organization funded by governmental entities for the purpose of providing free legal services to the needy, with its principal office at Sylvania House, Juniper and Locust Streets, Philadelphia, Pa. Defendants, Jonathan M. Stein, Esquire; Linda Bernstein, Esquire; Marjorie A. Janoski, Esquire; Richard Weishaupt, Esquire; Marilyn Doria Weiler, Esquire; Edwin Montes, paralegal; Bartholomew Poindexter, Esquire; Deborah Kooperman, paralegal, and Eileen Wood, paralegal, are, and/or at the times in question set forth hereinafter, have been employees of Community Legal Services, Inc., have been acting as its agent, servant or employee and are sued in their official and individual capacities, jointly and severally.

7. In order to preserve their impartiality and to make them independent of pressures from agencies whose cases they pass upon, administrative law judges, pursuant to the Administrative Procedures Act, P.L. 89-554, Sept. 6, 1966, 5 USC 101 et seq., are granted independent status. They are entitled to compensation prescribed by the Civil Service Commission, independently of agency recommendations or ratings and are not included in the annual service rating program applicable to most other Civil Service employees for the purpose of measuring and recording efficiency as provided by section 5362 of 5 USC. They can be removed only for good cause established and determined by the Civil Service Commission on the record after opportunity for hearing under section 7521 of 5 USC. Section 3105 of 5 USC requires that administrative law judges shall be assigned to cases in rotation.

8. Under the direct delegation from the Secretary of Health, Education and Welfare, and in the manner prescribed by the Administrative Procedure Act (as codified in 5 USC), the administrative law judge within the Department of Health, Education and Welfare, Social Security Administration, holds hearings and makes and issues decisions on appeals from determinations made in course of administration of Title XVI and section 216(i) and 223 of Title II of the Social Security Act. Administrative Law Judges decisions are final decisions of the Secretary unless subsequently reviewed as provided in the regulations. They either affirm, modify, or reverse the previous determination and are issued and forwarded directly to the parties in the administrative law judge's own name. Defendant Bureau's "Peer Review Program" as

set forth in Exhibit "I", made a part hereof, violates the Social Security Act and Administrative Procedure Act and the constitutional and civil rights of administrative law judges, claimants and the public.

9. Plaintiff's position description, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference expressly provides, inter alia, under "III. SUPERVISION AND GUIDANCE RECEIVED". "The Social Security and Administrative Procedure Acts prohibit substantive review and supervision of the administrative law judge in the performance of his quasi-judicial functions. His decisions may not be reviewed before publication, and after publication only by the Appeals Council in certain prescribed circumstances. He is subject only to such administrative supervision as may be required in the course of general office management. His decisions take into account all applicable Federal, State and foreign laws, statutes, regulations, rulings and decisions of the Federal Courts. Decisions can be reviewed at the request of a claimant, or by the Council on its own motion. In any event, the Council takes jurisdiction only on a certiorari basis. Final decisions of the administrative law judge may be appealed to the Federal courts, and the Social Security Act (Sec. 205(g)) requires that the courts uphold the administrative law judge's findings of fact when supported by substantial evidence.

10. The Major Duties and Responsibilities of plaintiff, as set forth in the position description, consist of the following: "Under the provisions of Title II and XVI of the Social Security Act and applicable Federal, State and foreign laws, and in conformity with the Administrative

Procedure Act, and with full and complete individual independence of action and decision, and without review, the administrative law judge has full responsibility and authority to (1) dismiss or grant requests for hearings and rule on requests for extensions; (2) identify problems and issues to be resolved; (3) analyze all previously developed evidence and appraise previous adjudicative processes by the administrative agency; (4) determine whether there are other parties with adverse interest to be joined in the case; (5) issue subpoenas and rule on petitions to revoke subpoenas; (6) correlate and resolve conflicting evidence; (7) hear testimony and rule on all motions, petitions, or exceptions involving questions of law, procedure, and the admissibility of evidence; (8) hold prehearing conferences with the appellant and or his counsel; (9) make all evidence of record available to the parties and inform them of any evidence or expert testimony required in connection with a material point or issue; (10) obtain expert vocational and medical testimony where required for a sound record; (11) administer oaths and affirmations; (12) govern the conduct of the parties at the hearing, and in general regulate the entire course of the proceedings; (13) control the examination and cross-examination of witnesses; (14) introduce into the record documentary and other evidence deemed necessary for a complete and sound record; (15) hear oral argument, and receive and consider briefs that are submitted; (16) appraise the credibility of witnesses, and resolve conflicts in lay and expert evidence; (17) consider and dispose of proposed findings of fact and conclusions of law submitted by the claimant's representatives; (18) make findings of fact on each issue, giving the reasons therefor and render conclusions of law as sole

trier of fact and law; (19) fully consider all the evidence of record and issue decisions within the requirements of the Administrative Procedure Act, which decisions are completely independent and final, signed only by him, and published to parties in interest without prior review; and (20) entertain petitions for attorney's fees and issue orders designating the amount of fee permitted; (21) preside at hearings and issue decisions in matters remanded by the Federal courts. The administrative law judge may also take other action not inconsistent with the Administrative Procedure Act."

11. The Code of Judicial Conduct, which governs anyone who is an officer of a judicial system performing judicial functions, whether or not a lawyer, expressly provides in Canon 1: "An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective."

12. The above named Bureau officials, defendants, conspired with each other and with employees defendants of Community Legal Services to (1) prevent plaintiff, by intimidation or threat, from discharging some of the duties of her office; injure her in her property on account of her lawful discharge of the duties of her office; and while engaged in the lawful discharge thereof, to injure her property so as to interrupt, hinder, or impede her in the discharge of her official duties; (2) to deter, by intimidation a party to a proceeding before plaintiff from testifying to

a matter pending therein, freely, fully and truthfully and injured such party in her property on account of her having so attended and testified; and to impede, hinder, obstruct, or defeat the due course of justice within the State of Pennsylvania, with intent to deny its citizens the equal protection of the laws, and to injure plaintiff in her property for lawfully enforcing or attempting to enforce the rights of claimants to the equal protection of the laws; and (3) deprive, either directly or indirectly, plaintiff and claimants of the equal protection of the laws, or of the equal privileges and immunities under the laws, as hereinafter specifically set forth.

13. On February 15, 1977, Pearl Taylor, social security disability claimant, testified at a hearing before plaintiff, at which defendants Jonathan Stein, Esquire, and Edwin Montes were present, that she had absolutely no knowledge that said defendants filed a motion in her behalf requesting plaintiff disqualify herself from the case; that said request or motion had never been discussed with her by anyone at Community Legal Services; that she never requested or authorized anyone to file it in her behalf; that she did not know the judge; that the judge did not do anything to her and it would be unfair both to herself and the judge to make any statements against the latter. She stated defendants' actions were "politics", "stoned politics"; that they "misused" her; that she "lived in this world long enough to know that people make people do their dirty work and misuse other people for their stepping stones"; that she did not know why her case was transferred in about September 1976 from Community Legal Services Law Center West, located at 5219 Chestnut

Street (where she had been going for years) to the downtown office at the Sylvania House, Juniper and Locust Streets; that "that's just where they told me to go"; that defendant, Community Legal Services, "make a rag mop out of you, they throw you from one place to another, from one place to the other and confuse your mind, so no wonder the hospitals are full of people, they're disgusted with this, and people ought to be shamed of themselves who just misuse people and walk over top of them for their own ambition."

14. Because of Mr. Stein's obstructive tactics and unruly and offensive remarks and manner, as aided and abetted by Mr. Montes, against which he was repeatedly warned and admonished by plaintiff against repetition, without compliance, the plaintiff, with the consent of claimant, was compelled to terminate the hearing and defer taking testimony on the merits of the claim until a later date.

15. On February 15, 1977, defendants Jonathan Stein and Edwin Montes, contrary to the Administrative Procedure Act, 5 USC section 557, and the Code of Professional Responsibility, and in furtherance of the conspiracy alleged, addressed an ex parte communication to defendant, Sol Gitman, with copies to defendants Philip Brown and Robert Trachtenberg (as Appeals Council Member) and Laurence Weiner, Appeals Council Member, wherein, inter alia, they made a variety of serious allegations against plaintiff (including intimidating claimant), presented their version of the facts of the hearing, requested defendant Brown to remove plaintiff from Mrs. Taylor's case as well as from all Social Security cases and

requested that he obtain and review a transcription of the hearing. The letter further states: "I am providing further copies of this letter to relevant Appeals Council members so they too may be apprised of Mrs. Chocallo's behavior which they should not be forced to remedy on an ad hoc case by case review, as we are concerned about the claimant whose cases may not go up to them, and those claimants like Mrs. Taylor, who should not be forced to undergo months of delay in appeals to the Council to right fundamental wrongs in the hearing process that are due to the incompetence and bias of a particular ALJ. May we have your response as to the transcription and review of this record for conformity to basic standards of decency and fairness by an A.L.J. We shall be happy to provide you with further copies of affidavits and letters we have submitted to substantiate Mrs. Chocallo's past bias. (They may not include the recent incident last week when Mrs. Chocallo ordered out of a hearing a CLS staff attorney, Henry Sommer, Esq., who was attempting to supervise a paralegal advocate a [sic] a hearing.)"

No copy of said letter was sent by defendants to the plaintiff. A copy thereof is attached hereto and made a part hereof as Exhibit "C", being a part of letter dated March 10, 1977 from defendant Brown to plaintiff hereinafter referred to.

16. On February 17, 1977, while plaintiff was absent from the office and without her knowledge and consent, the Administrative Officer of the Philadelphia BHA office, acting at the direction of defendants Bureau administrators, attempted to secure Mrs. Taylor's files from plaintiff's secretary without success inasmuch as precau-

tionary measures had been taken by plaintiff to protect said files. On March 15, 1977, plaintiff addressed a communication to claimant calling her attention to this fact, a copy of which is attached hereto and made a part hereof as Exhibit "B", together with memorandum of February 18, 1977 to the Administrative Officer.

17. On March 17, 1977, plaintiff received a letter dated March 10, 1977 from defendant Philip Brown, together with a copy of the letter dated February 15, 1977 which he received from Mr. Jonathan M. Stein. The letter states, inter alia, that he had not formed a judgment on the truth or falsity of the allegations and that he will not do so until he has all the facts, including plaintiff's statement of the events. Mr. Brown further stated: "It is my sincere hope that you will be able to resolve your differences with Community Legal Services to the extent that the public will receive the prompt and courteous service they have a right to expect." A copy of said letter and attachment, is attached hereto as Exhibit "C" and made a part hereof.

18. On May 10, 1977, plaintiff entered an interlocutory order excluding Messrs. Stein and Montes from further participation in Pearl Taylor's case in order to assure the orderly conduct of the proceedings and the proper and efficient administration of justice and to safeguard claimant's and the public's interest to the full extent of their rights and the rights and dignity of the tribunal. Claimant was given thirty days to secure other representation. Plaintiff's Memorandum attached to the aforesaid interlocutory order discussed in detail the reasons therefor and stated, inter alia, that "The tactics em-

ployed [by Mr. Stein] were deliberately orchestrated to create a charged and unmanageable atmosphere in order to seriously disrupt the adjudicative processes and degrade the dignity and authority of the presiding judge. His motives, obviously, were not intended to subserve the best interests of the claimant but, conversely, were concerned with covert purposes, i.e., to contrive evidence in behalf of a colleague and certain Bureau officials in a case on appeal. Further: "In reaching their decisions, neither the courts nor administrative bodies should ignore the realities of life and disregard common knowledge even though such knowledge may not have achieved a place within the purview of judicial notice. . . It is a matter of common or public knowledge that other blacks have been 'misused' by Mr. Stein, as reported by the news media on March 24, 1977. . . As reported, two of Mr. Stein's black clients confessed before the federal courts, their testimony under oath was 'fixed . . . a lie'; that Stein had 'instruction sessions' wherein he pressured them to repudiate the scattered housing they liked and lived in and to tell the judge presiding over the trial that their civil rights had been 'violated' and that the violation could only be remedied by building the long-disputed housing project. One of them stated the 'Stein pressure wore (her) down', that she was 'tired of being used' in furtherance of a Stein scheme she didn't believe in." A copy of said interlocutory order and memorandum are attached hereto as Exhibit "D" and made a part hereof.

19. Although Mrs. Taylor was advised on May 24, 1977 by Bartholomew E. Poindexter, Esquire of Community Legal Services, assigned to her, that he was going

to notify plaintiff of his representation and request a hearing be scheduled, he failed to do so until June 3, 1977, by letter dated May 27, 1977. A hearing was scheduled for June 13, 1977 at 9:30 A.M.

20. On June 10, 1977, defendants Gitman and Lightfoot, accompanied by Judge John Ennis, entered plaintiff's office at 11:10 A.M. and demanded she immediately surrender Mrs. Taylor's files. They then left an envelope which contained a copy of a letter dated June 9, 1977 from Jan J. Sagett, Deputy Chairman, Appeals Council, addressed to Mrs. Taylor, and copy of an Order dated June 9, 1977, which are attached hereto as Exhibit "E" and made a part hereof. Said Order, on petition of defendant Brown, vacated the interlocutory order of May 10, 1977 referred to in Paragraph 18 and "remanded" the case to defendant Gitman for reassignment to another judge in 10 days, contrary to the express statutory powers and limitations imposed on Appeal Council governing review.

21. On June 10, 1977, Mrs. Taylor advised by phone that she had not received a copy of the aforesaid letter of June 9, 1977 and order; that Mr. Poindexter phoned and told her plaintiff's "superior", Judge Brown, defendant herein, was taking the case away from plaintiff; that she did not want another judge and it was her intention to appear and present her case on Monday, June 13, 1977.

22. Mrs. Taylor appeared with her minister before plaintiff on June 13, 1977 and stated she wished to proceed without representation and without Mr. Poindexter, who she testified "refused to be here when I told him the date and time." She also testified she never received a copy of the Order or memorandum dated June 9, 1977 by

Judge Brown to Deputy Chairman, Appeals Council; that Mr. Poindexter informed her of it and explained that her case "got confused"; that she should wait until June 13, 1977 "to hear from him about a set date and a change of judge in this matter because they had to separate my case from yours"; that "I told him I strictly was against it. I had started something and once I start something I see it through. Not their way but my way. And I chose him to defend me or to stand for me as speaker because of his position with legal aid but I didn't ask him to think for me or deny me my right to think for me. And they insisted on telling me what I should do." She stated they "openly admitted" there is this conspiracy against plaintiff; "it was a battle" and she "had to choose sides."

23. With respect to the order of June 9, 1977, claimant testified: "This was purposely done because obvious there's a conspiracy against you. I had a three way conversation between Poindexter, Mr. Stein and myself, and he openly stated that this was a battle to me and openly came out between the lines and said you either join us or be defeated if you do not choose to fight the battle with us and that's just what he said. And I had no other choice than to drop all matters with him and told him to his teeth this is not my fight. I got my own battles to fight and if any side be chose, I chose mine a long time ago and he couldn't change it. And they insisted on doing the thing their way. And I let them know I couldn't care less about their insistence by ignoring them. See that's the way they run people today. That's the way they rule people today, insisting on what you had to do. See, I know what it's all about." They indicated this was a

means to depose plaintiff from office; that, as testified by her, "They just said this was the means to the end. This is the purpose of all of this."

24. According to information furnished by Mrs. Taylor, a meeting took place at the Bureau's offices, 1528 Walnut Street, immediately prior to the hearing of February 13, 1977 between defendants, Messrs. Stein, Montes and an individual presented to her as plaintiff's "superior", identified by her as defendant Gitman, who stated 15 other cases had been heard and turned down by plaintiff on the same grounds; that plaintiff discriminated against welfare seekers with psychiatric conditions—that they could at least get work as ticket sellers in movie houses; that he assured her she would receive disability benefits irrespective of whether plaintiff denied her claim. The purpose of these statements, as conveyed to her, was to get evidence against plaintiff in order to have her removed from office.

25. On June 18, 1977, plaintiff, who was absent from the office on sick leave since June 14, 1977, received through the mail a letter from Mr. Jan Sagett dated June 14, 1977, threatening her with appropriate action if she failed to deliver to the Acting ALJIC all records, files, etc. in Mrs. Taylor's case by June 16, 1977. Mr. Sagett failed to send Mrs. Taylor a copy thereof nor was she advised by him, or by the other defendants of her rights in the matter.

26. Pursuant to law, it is plaintiff's duty to safeguard the rights and interests of Mrs. Taylor and also to safeguard the rights and interests of the public who are not represented by counsel in these proceedings and she

is precluded from giving force and effect and obeying unlawful orders.

27. Defendant, Philip Brown, who is under the authority and supervision of defendant Robert Trachtenberg, Bureau Director who also serves as Chairman of Appeals Council, is not a party to Mrs. Taylor's case and was without legal standing to petition the Deputy Chairman of Appeals Council, who acted in concert, to vacate plaintiff's interlocutory order excluding Mr. Stein from further participation in her case, alleging that her rights would be violated by implementation of said order. Defendant was serving the interests of Mr. Stein and deprived claimant of the equal protection of the law and acted arbitrarily, summarily and contrary to her rights and interests. Such action not only constituted an unlawful abuse of his ministerial powers and duties but was in furtherance of the conspiracy to prevent, hinder and interfere with plaintiff in the performance of her duties and deny claimant the equal privileges of the law.

28. Appeals Council, viz. Messrs. Sagett and Friedenberg, whose jurisdiction is prescribed by law, lacked legal authority to vacate the interlocutory order of May 10, 1977 and to remand the case to defendant Gitman for reassignment. Pursuant to Regs. No. 16, sections 416.1457, 416.1464 and 416.1465, it may, on its own motion or on request for review by claimant, review a hearing decision filed by a presiding judge after close of a hearing, and may remand to the presiding officer for rehearing, receipt of evidence, and decision any case on which review is granted, pursuant to section 416.1467 of Regs. No. 16. Because on June 9, 1977, the date of the order, Mrs. Tay-

lor's case had not been closed and no hearing decision had been filed by plaintiff, Mrs. Taylor's case was not before Appeals Council for review, and, therefore, it had nothing before it to remand.

29. On February 10, 1977, at a hearing before the plaintiff in a claim filed by applicant in behalf of her minor son (referred to herein as the Smith case), the applicant testified that she had never been informed that defendants Marjorie A. Janoski and Deborah Kooperman filed a request that plaintiff disqualify herself from the case on the ground that she was "biased" against Community Legal Services employees, etc., together with "Affidavits and Exhibits"; that defendant Weishaupt, who represented her at the hearing, never discussed it; that she had no knowledge thereof; did not authorize it and was opposed to it; that she wished to proceed before plaintiff since she felt plaintiff would give her son a fair hearing and would render an impartial decision in the matter.

30. Defendant Richard Weishaupt testified under oath at the aforementioned February 10, 1977 hearing that defendant Judge Gitman contacted him orally about six months prior thereto and "asked if I would please file a formal complaint" against plaintiff "because of certain irregularities that occurred at another hearing" that took place in the summer of 1976 before plaintiff; said "irregularities" were identified by him as plaintiff's alleged failure to grant a continuance and to issue a subpoena; that he thought "they did protest the judge's failure to give a continuance and her failure to issue a subpoena in the case but I'm not sure." The records of the case referred to by Weishaupt show Community Legal Services was

granted two continuances in the case and never requested the issuance of a subpoena. He further testified that he did not furnish Gitman with the complaint requested and could not remember whether defendant Lightfoot made a similar request and whether he complied.

31. Defendants Gitman and Lightfoot and Linda Bernstein covertly solicited complaints against plaintiff from Lawrence Mendelson, a former Communty Legal Services attorney who appeared before her on February 20, 1975, as evidenced by letters dated March 18, 1976 addressed to Lightfoot and September 20, 1976 addressed to Gitman, copies of which were attached to defendants Janoski and Kooperman's letter to plaintiff dated January 28, 1977 requesting that she disqualify herself from presiding over the case heard on February 10, 1977 referred to in Paragraphs 29 and 30. Copies of Mr. Mendelson's letters are attached hereto as Exhibit "F" and made a part hereof.

32. Defendant, Linda Bernstein, Esq., in conspiracy with Lightfoot, Gitman et al., requested that Marilyn Doria Weiler, defendant, attorney with Community Legal Services filed a complaint against plaintiff as evidenced by copy of her letter dated March 3, 1976, addressed to defendant Lightfoot, marked "CONFIDENTIAL AND PERSONAL", which also was attached to Miss Janoski's letter of January 28, 1977. A copy of said letter is attached hereto as Exhibit "G" and made a part hereof.

33. Defendants Lightfoot, Gitman, Brown and Trachtenberg and Linda Bernstein conspired by intimidation and threat to prevent, impede, hinder and obstruct

plaintiff from performing her duties in the Mr. Doe Case (fictitious name) and did in fact grossly interfere in her judicial functions in this case, heard by plaintiff on December 29, 1975, in the following manner:

(a) Ms. Bernstein, Mr. Doe's attorney, testified in his behalf. Mr. Doe's testimony revealed he withheld from the Pa. Dept. of Welfare and the Social Security Administration, from whom he and his wife had been receiving welfare payments and supplemental security income payments, respectively, the fact that he was employed and had been working continually for 32 years. Claimant and counsel were requested to submit certain relevant documentation post hearing, which they did not do.

(b) On December 31, 1975, Ms. Bernstein addressed an ex parte communication to defendant Lightfoot wherein she discussed the merits of the case, made allegations against plaintiff and requested him to remove plaintiff from the case.

(c) On January 6, 1976, Lightfoot wrote to plaintiff asking her to respond to Ms. Bernstein's allegations both to him and to her indicating that plaintiff should "recuse" herself from the case.

(d) On January 7, 1976, plaintiff wrote Lightfoot advising him, inter alia, he infringed upon her independence as the presiding judge and attempted to influence her actions in violation of the law and his professional obligations; that while the case was within her jurisdiction she would not condone or permit it to be litigated or argued by counsel or claimant, nor would it be discussed or de-

cided other than in the proper forum, in the proper manner and in accordance with applicable statutes, procedures, regulations and appropriate precedents.

(e) On January 8, 1976, Lightfoot notified Bernstein by letter that plaintiff declined to voluntarily "recuse" herself and to respond to the allegations made concerning her behavior; that he assumed this was based on plaintiff's feeling she was able to conduct a fair and impartial hearing and reach a fair and impartial decision; that "since apparently the case has been concluded on the merits and is awaiting decision this office contemplates no further action in that area." He also advised her what remedies she could pursue.

(f) On January 14, 1976, plaintiff was directed by telephone to present herself at Gitman's office, 3636 Market St., on January 19, 1976 at 9:00 A.M. to discuss Mr. Doe's case as well as her "productivity." She advised that although she would appear, professional ethics precluded such discussion and she would not deviate from the position set forth in her letter of January 7, 1976 to Lightfoot; moreover, any conversation with Gitman would have to be recorded so there could be no misunderstanding as to what transpired. The subject conference was aborted at the outset when Gitman refused to have the conversation taped and threatened plaintiff that he was going to have her investigated and fired.

(g) On January 15 and 22, 1976, the aforegoing threats, intimidation and attempts to interfere with plaintiff's independent and impartial handling of Mr. Doe's case were reported to defendant Trachtenberg. (Ex. H89-95)

(h) By letter dated February 17, 1976, Trachtenberg responded through Brown threatening plaintiff with "insubordination"; condoning Gitman's and Lightfoot's actions and also attacking her "productivity." (Ex. H87, 82-86)

(i) On January 23, 1976, Mr. Doe and Bernstein were notified to appear at a hearing scheduled by plaintiff for January 30, 1976 for the taking of additional testimony. They failed to appear or to explain or apologize to plaintiff for their defiance of her order.

(j) On January 29, 1976, Bernstein communicated with Lightfoot advising him, inter alia, that she "too thought that the case had been concluded on the merits"; that neither she nor claimant would appear before plaintiff. A copy of said letter mysteriously appeared sans envelope in plaintiff's mail box late the afternoon of January 30, 1976. (Ex. H-96, 97)

(k) On February 27, 1976, Gitman and Lightfoot, who stated they were carrying out the oral directions of Trachtenberg, verbally directed plaintiff to surrender the entire file in Mr. Doe's case within 3 hours.

(l) On March 9, 1977, plaintiff was requested by phone to forward Mr. Doe's entire files to a staff member of Appeals Council, who was asked to submit a written request setting forth his reasons so that it could be properly considered by plaintiff. This was never done.

(m) A subpoena duces tecum was issued upon Mr. Doe by plaintiff directing him to appear at a hearing scheduled for May 19, 1976 and bring with him certain records, as specified therein.

(n) A subpoena was issued upon Bernstein directing her to appear for further examination at a hearing scheduled for May 18, 1976.

(o) Mr. Doe and Bernstein failed to comply with the subpoenas at, it is believed and averred, the instruction and with the urging and approval of defendants, Gitman, Lightfoot, Brown and Trachtenberg.

(p) Additional information obtained by plaintiff from the District Offices in June and July 1976 indicated that because Mr. Doe had not disclosed and reported his earnings as required, he and his wife collected approximately $3000.00 in benefits to which they were not entitled under the law inasmuch as they did not qualify for supplemental security income. A supplementary hearing was scheduled by plaintiff for July 22, 1976, with notice to Mr. and Mrs. Doe and Ms. Bernstein, on the new issue, to wit, whether there was an overpayment and, if so, for what months and whether recovery of the overpayment may be waived under the provisions of the Social Security Act. Mrs. Doe was joined as a party to the proceedings. The parties and Ms. Bernstein failed to appear.

(q) On February 29, 1976, plaintiff communicated with Secretary David Mathews of the Department of Health, Education and Welfare requesting that a full investigation be made of defendants conduct in this case and other illegitimate practices reported.

(r) By letter dated April 9, 1976, Trachtenberg advised plaintiff that the Secretary referred the aforesaid letter to him for reply; that he decided to recommend that an adverse action be taken against plaintiff and, therefore, it would be improper for him to reply. (Exhibit H 80)

(s) On April 28, 1976, plaintiff communicated with Secretary Mathews calling his attention to the fact that Trachtenberg's proposed action was contrary to Departmental regulations which forbid any retaliatory measures (either direct or tacit) reprisals, threats, interference, intimidation or withholding of compensation or promotion, where a complaint, request for investigation, grievance, etc. was filed or intended to be filed. A declaration of his policy was requested. (Ex. H-78, 79)

(t) On March 8, 1976, plaintiff communicated with Secretary Mathews advising him that she had been discreetly informed that defendants Gitman, Lightfoot et al. were covertly soliciting, collecting and pressuring various personnel to furnish complaints or adverse statements against plaintiff. (Ex. H-81)

(u) On May 5, 1976, plaintiff wrote Trachtenberg requesting an explanation as to why she had not received a promotion effective April 11, 1976 due her by operation of law. He failed to reply. On May 26, 1976, as a result of several calls made by plaintiff, the Personnel Officer notified her that as per Trachtenberg's directions "it would be inappropriate to institute a personnel action since the Bureau Director was recommending an adverse action."

(v) On May 25, 1976 the plaintiff reported Trachtenberg's actions to the Civil Service Commission. As a result, he was directed to initiate retroactive corrective action effective April 11, 1976, with copy to CSC. On August 7, 1976, plaintiff received a Notification of Personnel Action, dated July 30, 1976 which falsely stated "Retroactive Promotion due to administrative error." She

subsequently received a lump sum check for back pay. (Ex. H-76, 77)

(w) On October 29, 1976, plaintiff issued her decision in Mr. Doe's case, a copy of which is attached hereto as Exhibit "H".

(x) On September 17, 1976, Ms. Bernstein addressed a letter to defendant "Phil Brown" wherein, inter alia, she requested him to intervene in the case and presented her version of the facts and merits of the case. She failed to send a copy thereof to plaintiff but sent copies, as indicated thereon, to Gitman. (Ex. H-74, 75)

(y) On October 5, 1976, plaintiff received a letter from Brown to which he attached a copy of Bernstein's letter. He stated that it was his intention to have plaintiff's decision (when issued) reviewed by Appeals Council on the basis of Ms. Bernstein's dehors the record, ex pa te allegations. (Ex. H-73)

(z) On November 2, 1976, Lawrence Weiner, member of Appeals Council phoned plaintiff and told her defendant, Brown, had asked him to take Mr. Doe's case away from her and to write the decision; that this was an unusual request and had never happened before and, therefore, he wanted to discuss the status of the case before taking any action. He was advised that the decision had been issued by plaintiff on October 29, 1976. An appeal was taken by claimant from said decision, which discussed in detail the above events.

34. Contrary to the provisions of the Administrative Procedures Act requiring that cases be assigned to ad-

ministrative law judges by rotation (5 USC 3105), in order to further threaten and intimidate plaintiff and prevent her from performing her functions and work, defendant Lightfoot failed and refused to assign cases to plaintiff from January 1976 until October 1976 and from February 1977 onward. On April 6, 1977, plaintiff wrote defendant Lightfoot requesting an explanation as to why cases were not being assigned as required by law. He responded on April 15, 1977 attacking, inter alia, plaintiff's "production" record. On June 7, 1977, plaintiff replied thereto wherein she pointed out that certain judges' decisions, for which they were receiving credit, were being written by their law clerks and not them; that defendant refused to furnish plaintiff with a law clerk and other assistance furnished other judges. (Ex. H 64-68 attached hereto and made a part hereof.)

35. To further impede plaintiff in her work, defendants' Bureau administrators refused and failed to furnish her with a secretary and hearing assistant for a considerable period of time and sporadically furnished unqualified and incompetent temporary help.

36. On April 7, 1977, pursuant to the Privacy Act and Freedom of Information Act, plaintiff requested defendants Trachtenberg, Gitman and Lightfoot to furnish copies of all records and data the Bureau had on file about her. Gitman and Lightfoot replied that Trachtenberg would make a single reply. Trachtenberg by letter dated April 20, 1977 signed by Daniel Schultz, replied that the Act requires that plaintiff must specifically identify the documents known to exist. Subsequent correspondence ensued which made it obvious that defendants were resort-

ing to dilatory and other tactics in order to forestall compliance and discourage plaintiff. Thereafter, a request for review was filed with defendant Commission. (Ex. H-71 attached hereto and made a part hereof.)

36. Contrary to law, and in furtherance of the conspiracy to intimidate and harass plaintiff in the performance of her official duties, on May 4, 1977 plaintiff received a letter from defendant Brown, dated April 29, 1977 wherein he advised her that he was closely monitoring her case production and service to claimants; that unless action is taken by plaintiff to significantly increase her production, he will find it necessary to take further action; that defendant Gitman will keep him informed on a weekly basis of plaintiff's progress. (Ex. H-70, attached hereto and made a part hereof.)

37. Contrary to law, and in furtherance of the conspiracy to intimidate plaintiff in the performance of her official duties, on June 3, 1977, plaintiff received a letter dated May 31, 1977 from defendant Gitman wherein he requested plaintiff to inform him in writing each Monday as to the number of hearings held and dispositions issued for the preceding Monday through Friday; that the first report should be forwarded on June 6, 1966 [1977] and cover the period May 30 through June 3, 1977; that defendant Brown asked him to keep him informed as to plaintiff's production on a weekly basis. (Ex. H-69 attached hereto and made a part hereof.)

38. Plaintiff is informed and therefore avers that subsequent to the hearing attended by Mrs. Taylor on June 13, 1977, Mr. Poindexter of Community Legal Ser-

vices wrote advising her that her records in this and another case that they had been handling for her were being returned to her. They would no longer represent her, according to its purport and intent.

39. The theory upon which our political institutions rest is that all men and women have certain inalienable rights, that among these are life, liberty and the pursuit of happiness and that, in the pursuit of happiness, all vocations, avocations, all honors, all positions are alike open to everyone and that in the protection of these rights all are equal before the law. Defendants Bureau and its officials named herein, in concert and collusion with defendants Community Legal Services and its employees, deprived plaintiff of her protection to the rights of her vocation and office and have inflicted punishment upon plaintiff and interfered with, suspended and deprived her of her civil rights without any of the forms and safeguards of "due process" guaranteed by the Fifth Amendment of the Constitution of the United States.

40. Contrary to the Civil Rights Act, 42 USC 1985(1), defendants Bureau et al., together with defendants Community Legal Services et al., conspired to prevent by intimidation and threat, plaintiff from continuing to hold her office and trust and from discharging her duties as an administrative law judge, as hereinbefore specifically set forth. Further, said defendants injured her property, i.e., her right to pursue her lawful profession, by maliciously and intentionally damaging her professional reputation and integrity because of the lawful discharge of the duties of her office and by hindering and impeding her in the discharge of her official duties.

41. Contrary to the Civil Rights Act, 42 USC 1985(2), said defendants Bureau et al., together with Community Legal Services et al., by their actions as hereinbefore specifically set forth, which culminated in the Order of June 9, 1977, conspired to deter by intimidation or threat, Mrs. Pearl Taylor, a party in the proceedings before plaintiff, from testifying freely and fully in the matter pending before plaintiff and injured her property on account of her having so attended and testified. Further, they conspired for the purpose of impeding, hindering, obstructing or defeating the due course of justice, with the intent to deny plaintiff, the public and Mrs. Taylor the equal protections of the laws and to injure plaintiff in her property for lawfully enforcing the rights of Mrs. Taylor and the public to the equal protection of the laws.

42. Contrary to the Civil Rights Act, 42 USC 1985(3), said defendant Bureau et al., together with Community Legal Services et al., by their actions as hereinbefore specifically set forth conspired, for the purpose of directly or indirectly depriving the plaintiff, Mrs. Taylor and the public of the equal protection of the laws and equal privileges under the law and for the purpose of preventing and hindering plaintiff from giving or securing to the claimant, Mrs. Taylor, and the public the equal protection of the laws.

43. Contrary to law, defendants Bureau et al. and Community Legal Services et al. by their actions seriously impeded and imperiled the independence and integrity of the quasi-judiciary, deprived claimants and the public of their equal protection and privileges under the laws and

imperiled the integrity of the Social Security System to the detriment of the public.

44. Contrary to law, defendants Trachtenberg, the Bureau, et al., intentionally, maliciously and willfully, for over five months deprived plaintiff of a promotion and compensation admittedy due her by operation of law and of the other emoluments of her office to which she was entitled to her detriment and prejudice.

45. Defendants Bureau and defendants officials violated the rights of plaintiff under the Privacy Act by secretly collecting information about her that was not relevant and necessary to carry out operations required by statute or Executive Order and disseminating same without plaintiff's knowledge and consent that adversely affected her.

46. Defendants Bureau and officers thereof, as specifically set forth above, willfully and intentionally violated the following provisions of the Privacy Act, Sec. 552a(e) requiring that they shall (1) maintain in their records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President; (2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits and privileges under Federal programs; (3) inform each individual whom it asks to supply information on the form which it uses to collect the information or on a separare form that can be returned by the individual—'(A) the authority (whether granted by statute, or by executive

order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary; (B) the principal purpose or purposes for which the information is intended to be used; (C) the routine uses which may be made of the information, as published pursuant to paragraph (4) (1) of this subsection; and (D) the effects on him, if any, of not providing all or any parts of the requested information."

47. As hereinbefore specifically set forth, defendants officials of the Bureau willfully and intentionally and secretly solicited, induced or coerced attorneys and other individuals to file complaints or furnish adverse statements against plaintiff for the purpose of injuring her professional reputation and integrity and depriving her of her office in contravention of law, and have caused grevious harm to her.

48. The failure of defendants Trachtenberg, Gitman, Lightfoot and the Bureau and defendant Cardwell to grant plaintiff access to her record, as provided by the Privacy and Freedom of Information Act, despite her repeated requests for their production, is willful and intentional and has caused the plaintiff to sustain substantial damage and loss of reputation and standing, individually and professionally. Such wilful and intentional conduct and refusal is also causing plaintiff to sustain current and future damages in that she is, and will be constantly subjected to mental anguish and strain as a result of not being able to ascertain what adverse material concerning her professional and personal character, ability and competency is being maintained in the permanent records of the Social

Security Administration and the Department of Health, Education and Welfare, and will be accessible to other agencies or employers with whom she may seek positions or office, and to seek appropriate correction thereof. The presence of such adverse material has, and will continue to adversely affect plaintiff's earning capacity in her lawful profession, all honors, offices and positions which she may seek.

The aforesaid actions of defendants deprive plaintiff of her constitutional rights, privileges and immunities and the equal protections of the law and her civil rights for the following reasons:

1. The unscrupulous and illegal practices engaged in by defendants in furtherance of their conspiratorial design to destroy plaintiff's integrity, independence and efficacy are evidenced not by a single incident but by a series of consummate acts and a sinister scheme. The prolonged systematic and improperly motivated interference in her handling of the John Doe Case (which precipitated the solicitation of complaints and adverse statements against her), the numerous attempts to wrest the files from her in both cases and to divest her of jurisdiction; the suppression of evidence resulting in the concealment of a $3000 overpayment received by claimant; the pressures, reprisals and indignities directed against her, as further demonstrated by the events in Mrs. Taylor's case, forcibly establish said Bureau officials conspired to obstruct the proper administration of justice by plaintiff in order to destroy her effectiveness and render her impotent as a judge so that they could have her removed from office, directly or indirectly, and thus deprive her of the pursuits of her lawful vocation and of her livelihood.

2. The performance of the duties and responsibilities of plaintiff are seriously hampered by the fact that Messrs. Gitman, Lightfoot, Brown, Trachtenberg, during the course of a proceeding before her, have extra-judicial dealings with attorneys in the case, advise them to disregard plaintiff's notices, orders, subpoenas and rulings, promise they will have an adverse decision reversed, to assert complaints against her, to file motions to disqualify, to deal directly with them dehors the record, to be obstreporous and obstructive. The proper functioning of the judicial system depends upon lawyers and tribunals utilizing legal modes of procedures which will preserve the impartiality and independence of tribunals and make their decisional processes prompt and just. The action of said defendants are repugnant to fundamental law, transcend ethics and sound and honest judgment and are prejudicial to the rights and independence of the administrative law judge, the public and claimants. The rights and independence of the Administrative Law Judge must be scrupulously guarded even against the slightest encroachment thereon. They must be protected against any arbitrary and despotic exercise of power beyond the scope of legal authority, or from passion, prejudice or personal hostility.

3. The imposition of an arbitrary quota system requiring the disposition of 26 cases a month by the administrative judge and the evaluation of the latter's performance or "productivity" thereby exceeds the scope of the Bureau's lawful authority, violates the mandates of the Administrative Procedure Act and are contrary to the public's and claimant's best interests. Such a standard or assessment, based on undisclosed and tenuous grounds and

criteria, spawns an illegitimate measuring device and produces unrealistic, fictitional and false statistics. It is fundamental law that that which cannot be accomplished by means looking directly to the end, cannot be accomplished by indirect means. Otherwise, the inhibitions provided by law may be evaded at pleasure. The threat that those judges, regardless of circumstances, who fail to comply will be subject to "appropriate action", will not be granted transfers, and will be subject to other retaliatory measures violates fundamental law and the Administrative Procedures Act. Such pressures exerted by the Bureau compromise the independence and impartiality of the administrative law judge and the judicial system.

4. Plaintiff is being unlawfully deprived of her liberty to use the powers of her mind, judgment and experience in a vocation for which she has been certified to be competent by virtue of her appointment. She was selected, as set forth in her appointment papers, because of her "expert knowledge of judicial practice; exceptional professional attainments; a capacity for analysis and articulation; the ability to balance important and conflicting considerations and a proven ability to assure a fair hearing." Defendants actions are not only intimidating in essence but unlawfully usurp plaintiff's "full and complete individual independence of action and decision and without review" assured by law and by her job description.

WHEREFORE, plaintiff, being without adequate remedy at law, respectfully prays that:

1. The Court enter a permanent injunction against defendants Bureau et al. and Community Legal Services et al. from conspiring to prevent her from holding her

office and to enjoin the Bureau officials from interfering, hindering and impeding her in the discharge of her official duties.

2. The Court enter a permanent injunction against defendants Trachtenberg, Brown, Gitman, Lightfoot, jointly and severally, and any and all of their subordinates, enjoining them from engaging in extra judicial dealings and ex parte communications with lawyers, representative or claimants appearing in proceedings before plaintiff in connection therewith and from interfering in her complete independence of action and without review in such cases before her.

3. The Court enter a permanent injunction against defendants, jointly and severally, from misusing claimants and abusing the processes of the law and the judicial system.

4. The Court enter a permanent injunction against defendants Bureau and its officials, jointly and severally, and any and all of their subordinates, enjoining them from collecting, disseminating, and maintaining information and data about plaintiff contrary to her rights under the Privacy Act and in violation of the provisions thereof.

5. The Court enter a permanent injunction against defendants Bureau et al., their respective agents and successors from interfering in and supervising plaintiff's independent handling of the Pearl Taylor Cases and any and all other cases assigned to her.

6. The Court enter a permanent injunction against defendants, Bureau et al., jointly and severally, their respective agents and successors, enjoining them from

threatening, intimidating and initiating any retaliatory and adverse action against plaintiff and from attempting to remove her from office, supervising or attempting to supervise her quasi-judicial functions and work and from failing and refusing to furnish her with a law clerk and other assistants provided other judges.

7. The Court enter a permanent injunction against defendants Bureau et al., jointly and severally, their respective agents and successors, directing them to assign cases to plaintiff and others by rotation as required by law.

8. The Court enter a permanent injunction against defendants Bureau et al., jointly and severally, their respective agents and successors, enjoining them from harassing and measuring plaintiff's efficiency and productivity by an esoteric "national average".

9. The Court enter a permanent injunction against defendants Bureau, Trachtenberg, Gitman and Lightfoot, Cardwell, jointly and severally, their respective agents and successors from withholding access to all of the data maintained on plaintiff and mandating that said records be produced for examination and copying by her, or her designee.

10. The Court award her damages in the sum of One Million Dollars against all defendants, jointly and severally, for the damage done to her professional reputation and personal integrity and character by virtue of their unlawful invasions upon her privacy and malicious, willful and intentional actions to harm and destroy her professional competency and future and to deprive her of her office and the pursuits of happiness in her lawful profes-

sion and any offices and honors that she may seek or that may be available to her.

11. The Court award her damages for the outrage, mental anguish, strain and shock suffered by her and any loss of earnings and earning capacity resulting from defendants actions.

12. The Court award her punitive damages against defendant Trachtenberg personally for abusing the powers of his office to plaintiff's detriment by willfully, intentionally and unlawfully depriving her of the promotion admittedy she was entitled to by operation of law for over five months.

13. The Court award punitive damages against defendants Trachtenberg, Brown, Gitman and Lightfoot, jointly and severally, for abusing their ministerial powers and depriving plaintiff of her civil rights.

14. The Court award punitive damages against Community Legal Services and its employee defendants, jointly and severally, for depriving plaintiff of her Civil Rights.

15. The Court award plaintiff actual damages sustained as a result of the willful and intentional withholding of the requested data in plaintiff's files, in an amount not less than $1,000, as authorized by the provisions of 5 USC 552a (g) (4) (A).

16. The Court award plaintiff the costs of this action, together with reasonable legal fees as authorized by law.

17. The Court grant a temporary restraining order and a preliminary injunction be issued, pending the hear-

ing for the determination of the prayers for permanent relief, restraining defendants Bureau officials and their respective agents and successors from threatening to initiate or from initiating any action adverse to plaintiff and from interfering in her full and independent action and without supervision and review in the performance of her quasi-judicial functions, and from attempting to enforce the unlawful order of June 9, 1977, which contravenes the rights and interests of claimant, Mrs. Taylor and the rights and interests of the public.

19. The Court issue a permanent injunction enjoining Trachtenberg, Brown, Gitman, Lightfoot, their agents, employees and successors, and the defendants Community Legal Services, its employees, agents and those named herein from any further participation or continuation of the systematic covert and insidious conspiracy in existence since the John Doe Case on or about January 1976, as further corroborated by the disclosures and events in the Taylor case and to solicit, collect and induce claimants and/or their representatives by promises, persuasion, pressures or coercion to utter statements intended to discredit, degrade, defame and injure plaintiff's professional and personal integrity, competency and reputation; to obstruct the effective, orderly, independent and impartial administration of justice by her; and to otherwise in any manner interfere in her independent and impartial actions in handling all cases before her.

20. The Court issue a permanent injunction restraining defendants Bureau officials from holding themselves out to claimants and their representatives that they have supervisory authority over plaintiff's judicial functions and

decisions; that she is subservient to their will and subject to their dictates; that she is accountable to them for her judicial actions in cases before her and can be overruled by them.

21. The Court issue a permanent injunction restraining defendants Bureau officials, their agents and successors from enforcing the "quota" system imposed as a measure for rating the performance and efficiency of administrative law judge and from exerting all manner of pressures and retaliatory measures in connection therewith, all of which contravene the prohibitions of the Administrative Procedures Act and Social Security Act and from enforcing a "peer Review Program" initiated whereby decisions of judges would be scrutinized and reviewed and certain prescribed action taken by law personnel in the regional office, in violation of the law.

22. The Court order a full inquiry into the operations and activities of the Bureau of Hearings and Appeals and Community Legal Services in order to determine the full scope and extent of the irregularities, injustices and abuses committed.

23. Such other relief as the Court may deem appropriate.

s/ Wanda P. Chocallo
308 Maple Ave.
Drexel Hill, Pa. 19026

Complaint
Exhibit "C"

EXHIBIT "C"

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

Social Security Administration
P. O. Box 2518
Washington, D.C. 20013

[Seal]
Refer to:
IHA:63

Bureau of
Hearings and Appeals
10 Mar 1977

Wanda P. Chocallo
Administrative Law Judge
1528 Walnut Street
10th Floor
Philadelphia, Pa. 19107

Dear Ms. Chocallo:

This refers to a letter dated February 15, 1977 which I received from Mr. Jonathan M. Stein, a staff attorney with Communty Legal Services, copy of which is enclosed for your information.

I do not intend to discuss the specifics of the letter nor the charges made against you. I have not formed a judgment on the truth or falsity of the allegations and I will not do so until I have all of the facts, including your statement of the events. One factor relative to this correspondence which disturbs me deeply is the possibility that claimants who appear before you are becoming un-

witting victims of the obviously poor professional relationship which exists between you and Community Legal Services. I do not know who is to blame for this state of affairs. It is not material to my primary concern at this time.

The following comments are offered for your serious consideration and application in all cases which come before you for hearing.

> The Administrative Procedure Act grants a party the right to appear in person or by or with counsel or other duly qualified representative in an agency proceeding (5 USC 555). The courts have held that the right to counsel means the counsel of one's choice. As long as a claimant's representative fulfills the requirements for appointment and qualifications as specified in the regulations, he or she is entitled to pursue the claim without hindrance. Any attempt to dissuade a claimant from retaining an eligible representative is an infringement on the rights granted by the Administrative Procedure Act.
>
> A hearing is to be confined to the issues raised by the request for hearing and such specified new issues which may affect the rights of a party. In general, issues which affect the rights of a party are those which are identified as administrative actions that are initial determinations on claims for benefits under the Social Security Act (see 20 CFR 404.924). Procedural matters or collateral issues not essential to a determination on the basic issue of entitlement to

Social Security benefits should not constitute a part of the record and decision on a case.

There is no express or implied requirement in pertinent law and regulation that a claimant have only one individual as a representative. The administrative law judge is entitled to use his or her discretion as to the conduct of the hearing provided the proceeding is of such a nature as to afford the parties a reasonable opportunity for a fair hearing. In the absence of good and sufficient cause in each individual case, it appears arbitrary, capricious and an abuse of discretion for an administrative law judge to summarily exclude co-counsel, a supervising attorney or a novice representative from a hearing.

It is my sincere hope that you will be able to resolve your differences with Community Legal Services to the extent that the public will receive the prompt and courteous service they have a right to expect.

Sincerely yours,
(s) Philip T. Brown
Philip T. Brown
Chief Administrative Law Judge

Enclosure

Complaint
Exhibit "C"

COMMUNITY LEGAL SERVICES, INC.
Sylvania House
Juniper and Locust Streets
Philadelphia, Pa. 19107
215-893-5300

February 15, 1977

Honorable Sol F. Gitman
Regional Chief, Administrative Law Judge
Bureau of Hearings and Appeals
10th Floor
1528 Walnut Street
Philadelphia, Pennsylvania

Received Feb. 18, 1977, Office of Chief ALJ

Re: Complaint of ALJ Wanda P. Chocallo's Conduct at hearing of Pearl Taylor, S.S. #201-22-5316, February 15, 1977

Dear Mr. Gitman:

We are writing to you and Mr. Brown as supervisors of Wanda Chocallo, Administrative Law Judge, before whom we, as the chosen representatives of our client Mrs. Taylor, attempted to have an S.S.I. appeal hearing this morning. This experience confirms in our minds Mrs. Chocallo's incompetence, intemperate disposition and bias toward Community Legal Services representatives and to appellants who exercise their due process right to bring with them representatives of their choosing.

Mrs. Chocallo completely at her own volition chose to spend not one minute on the merits of the appeal but

rather almost 1 1/2 hours on extraneous matters and attacks on us as Mrs. Taylor's representatives. Mrs. Chocallo, after keeping us waiting for our scheduled hearing at 10:00 a.m. for 1 3/4 hours, until 11:45 a.m. (and with no explanation or later apology for the delay), spent the entire time, 11:45 a.m. to 1:05 p.m., on matters that had nothing to do with the merits of the case.

She began, without any of the usual preliminary introductions of who she was or what the purpose of the hearing was, but with a forceful and hostile questioning of Mrs. Taylor's obtaining of counsel at Community Legal Services. She demanded knowing where she went for legal aid, why she went to our West Philadelphia office when she lived in West Philadelphia (she had been a former client there), what she said to her first attorney, why she obtained counsel, why she was referred to our Sylvania House office, etc. She constantly told the client, who was a victim of 4 or 5 nervous breakdowns and one diagnosed as schizophrenia-paranoid type, that she had to make a choice between her two representatives or she would not allow the hearing to go on. She never once explained why an orderly hearing could not be held with both of us present.

Mrs. Chocallo was told very early that Mrs. Taylor had appointed as her representatives both Mr. Stein, an attorney of almost 10 years experience, and Mr. Montes, a paralegal with two years at University of Pennsylvania Law School and for whom this was his first S.S./S.S.I. hearing. Mrs. Taylor detailed, over our objections, each contact, the date and its nature, with each of us. Mrs.

Chocallo demanded to look at our client file after disbelieving Mr. Montes's restatement of Mrs. Taylor's address (a totally irrelevant matter). She blithely insisted that the attorney-client privilege did not apply to her inquiries into attorney-client communications. She screamed that she had a "right to examine" us as her representatives.

She harangued Mrs. Taylor about not informing the Bureau or she of a new address although Mrs. Taylor had informed her representative who she assumed would forward it. No harm, delays or confusion had occurred to anyone from this, and the matter was totally irrelevant to the initial denial for S.S.I. yet this took further time, and a moralizing, loud lecture to Mrs. Taylor on the subject, which further upset Mrs. Taylor who could not believe what was happening and was in great fear that she could never get her S.S.I. benefits.

Mrs. Taylor by this time had gotten intimidated by Judge Chocallo who she feared was unable to conduct any hearing. Mrs. Chocallo showed through her harangues absolutely no sympathy or understanding for a woman with real psychotic disorders which could only have been worsened by this experience.

We reminded the Judge that we had previously sought to disqualify herself on the basis of her past conduct towards Community Legal Services representatives and clients. We renewed this motion particularly after Mrs. Chocallo demanded to examine us as Mrs. Taylor's representatives, accusing us at one point of being non-believers in God. She also alleged we were part of a CLS conspiracy against her, slandering us as untrustworthy repre-

sentatives in the process, which seriously impaired our relationship with our client.

Although we had discussed with Mrs. Taylor that we would be moving to disqualify Judge Chocallo, and had sent Mrs. Chocallo a letter last week incorporating prior affidavits and letters filed with prior complaints sent to you, we never were given an opportunity to ask Mrs. Taylor any questions as to our explaining this disqualification request to Mrs. Taylor in the entire 1 hour and 20 minutes. The Judge monopolized the examination of this poor woman permitting no opportunity for our questions. The record thus is entirely Mrs. Chocallo's questioning and our objections. She even failed to give Mrs. Taylor a full opportunity to examine and read the 3-4 page letter to Mrs. Chocallo to disqualify herself, and then Mrs. Chocallo claimed it was sent without the knowledge of Mrs. Taylor.

By this time she had so intimidated Mrs. Taylor and, in our view, had so intentionally undermined the attorney-client relationship by accusing us of misusing Mrs. Taylor and other claimants, that Mrs. Taylor, in great fear of Mrs. Chocallo, wanted the hearing to cease, seeing that she could not possibly have a fair chance at a hearing with Mrs. Chocallo acting the way she was.

There was no resolution of the appeal's merits. After 1 hour and 20 minutes, not one minute had been spent on the merits, wasting taxpayer money, adding to the SSI hearing back-log, and further prejudicing through unnecessary delay a hearing for our client. Mrs. Chocallo directed that the hearing be continued at which time she

would prevent Mrs. Taylor from having her two representatives there, forcing her to choose one person. She even encouraged Mrs. Taylor to go to her minister for aid, even though Mrs. Taylor, concerned with the advice, volunteered that he was new and not skilled in SSI law. Mrs. Chocallo was clearly telling Mrs. Taylor not to trust her CLS representatives, and such conduct under reported decisional law here, in our view, constitutes the tortious interference with the attorney-client relationship.

The presence of an attorney with a paralegal here is not only a matter of a due process right and choice of the appellant (who stated early in the record that she had appointed both Mr. Stein and Mr. Montes), but is a matter of ethical restraint upon the CLS attorney. Under Disciplinary Rule 3-101 (a), a "lawyer shall not aid a nonlawyer in the unauthorized practice of law," and Ethical Consideration EC 3-6 further states under the Rule that when a lawyer delegates matters to a lay person (here Mr. Montes), this is proper "if the lawyer maintains a direct relationship with his client, *supervises the delegated work,* and has complete professional responsibility for the work product." (see enclosure) (emphasis added). A formal ABA Opinion 85 (1932) had earlier required that a law student may act as an agent for a lawyer but the latter must supervise his work and be responsible for his good conduct.

Mr. Stein attempted to explain to Judge Chocallo that he was there not only as an attorney for the appellant but also as a supervising attorney for Mr. Montes. As explained to, but ignored by Mrs. Chocallo, this was Mr.

Montes' first Social Security or SSI hearing ever, and it was particularly incumbent upon an attorney such as Mr. Stein to be present in a supervising capacity. Mr. Montes had seen the client on 4 or 5 occasions, Mr. Stein on 2. Mr. Montes, who had undertaken most of the case preparation and medical documents collection, was prepared to conduct the entire hearing himself, but under the guidance and supervision of Mr. Stein, a member of the Penn. and New York Bars, and a member of the U.S. District Court here, Third Circuit and U.S. Supreme Court Bars.

We are aware of no decision of any judicial or administrative forum demanding a client to choose among two representatives and to force one to be excluded where not even a satisfactory explanation was given to justify it. What is almost more serious is the intemperate, heavy-handed manner by which Mrs. Chocallo attempted to deal with the matter, i.e. lacking any rational attempt to discuss the matter cooly with the representatives, giving no explanation whatever why one had to leave, and never seeking the advice of any associate or supervising judge in her office to try to resolve the problem.

This irrational, emotional, and indeed paranoid response to a problem is, indeed, the most distressing part of her behavior which almost transcends the particular issue, and reflects a personality and intellect that has no place in the Bureau or in any halls of justice.

The abortive hearing of today shows a hearing officier who clearly lacks the judicial temperment; fairness and appearance of fairness; the acuity to determine what is and is not relevant; the respect for and full acceptance of the

right to representation of a client, that even if totally isolated from her prior conduct, requires Mrs. Chocallo's recusal from all Social Security/ S.S.I. cases.

We ask you and Mr. Brown immediately to order a transcription of today's hearing, so you can evaluate it for yourselves. We request a copy of it also.

We ask in addition that in the interim that our client not be rescheduled for a hearing with Mrs. Chocallo due to her most express hostility to us which any court of law would recognize on its face as grounds for immediate recusal of a judge. We do not wish now to seek federal court injunctive or mandamus relief against the new Secretary to insure that our client is not again subject to Mrs. Chocallo's bias and wrath, and we respectfully wish to give you Mr. Brown this opportunity to deal internally with this most pressing matter.

I am providing further copies of this letter to relevant Appeals Council members so they too may be apprised of Mrs. Chocallo's behavior which they should not be forced to remedy on an ad hoc case by case review, as we are concerned about the claimants whose cases may not go up to them, and those claimants like Mrs. Taylor, who should not be forced to undergo months of delay in appeals to the Council to right fundamental wrongs in the hearing process that are due to the incompetence and bias of a particular ALJ.

May we have your response as to the transcription and review of this record for conformity to basic standards of decency and fairness by an A.L.J.

Complaint
Exhibit "C"

We shall be happy to provide you with further copies of affidavits and letters we have submitted to substantiate Mrs. Chocallo's past bias. (They may not include the recent incident last week when Mrs. Chocallo ordered out of a hearing a CLS staff attorney, Henry Sommer, Esq., who was attempting to supervise a paralegal advocate at a hearing.)

Sincerely yours,
(s) Jonathan M. Stein
Jonathan M. Stein
Chief of Law Reform
(s) Edwin Montes
Edwin Montes
Paralegal

JMS/aa

cc: Honorable Philip Brown, Chief, Administrative Law Judge

Honorable Robert Trachtenberg, Appeals Council Member

Honorable Laurence Weiner, Appeals Council Member

Enclosure:

Complaint
Exhibit H—64-66

EXHIBIT H—64-66

MEMORANDUM

Department of Health, Education, and Welfare
Social Security Administration

To: James C. Lightfoot, Administrative Law Judge In Charge

From: Wanda P. Chocallo, Administrative Law Judge

Date: June 7, 1977

Refer to:

Subject: Case Assignments

This refers to your reply of April 15, 1977, to my memo of April 6, 1977, in regard to the above. In the interests of truth and accuracy, the misrepresentations contained in your letter warrant comment.

First, your implication that I would not comply with court imposed deadlines in remand cases is without any basis in fact. It is but another manifestation of the attempts undertaken to undermine and discredit my professional competency and reputation, even though on a number of occasions in the past you uttered accolades about my exceptional ability and accomplishments and remarked this fact was also recognized by Central Office.

To date, I have been assigned no court remanded cases. Appeals Council remanded to me for hearing in Pittsburgh a case decided by Regional Chief Administra-

tive Law Judge Gitman, whose decision was vacted by it. There were no court remands among the 15 Newark, New Jersey cases assigned to me, that were heard by me during the week of April 11, 1977. All were SSI cases, which substantiates my contention that assignments are not made by rotation but are "selectively" assigned contrary to law. All Newark cases have been disposed of by me by full-length decisions, with the exception of two, that are still pending development. None of the 25 Smithtown, New York cases that had been assigned to me on April 1, 1977, taken away on April 4 and reassigned by you to Judge Alan Neff involved court remands.

Apropos your comparison of Judge Neff's disposition rate with mine, you conspicuously failed to mention the fact that all of my decisions are written by me personally and exclusively, without the help of a law clerk, professional assistant or hearings analyst. On the other hand, it is common knowledge that most of Judge Neff's decisions are written by his law clerk. In addition, periodically he has been provided the services of analysts from the Baltimore office and others to assist in writing his decisions. (Likewise, he has been furnished an experienced, trained hearing assistant and secretary, which, of course, I have not. On May 12 1977, in my presence and that of my hearing assistant, Nancy Parkinson, Judge Neff's law clerk, Sam Beckett, stated "twenty three (23) decisions put out by Judge Neff two months ago, *nineteen (19) of which were written by him* and *only four (4) were written by Judge Neff;* that he has been writing practically all of Judge Neff's decisions but doesn't mind doing so." It is also a matter of common knowledge that in October 1976, during Judge Neff's absence from the office as a

result of surgery, his decisions were being written by his law clerk. Based on these statistics, although Judge Neff actually only wrote 4 decisions, a mere one-third of the number of decisions written by me personally in March 1977 he received credit for twice as many as the 12 credited to me. In January, 16 long-form decisions were written by me personally. I do not know how many were credited to Judge Neff.

Significantly, you also ignored my request for an explanation as to why law clerks have been assigned to the men judges in this office and none has ever been assigned to me to date. Unquestionably, this is a discriminatory practice. It is also a matter of common knowledge that other judges have law clerks and analysts, who write their decisions; that Judge Gitman frequently recruited the personnel of the SSI Development Center to help him with his decisions, many of which were Dismissals based on informal remands.

Your letter also conveniently ignores the fact that while other judges are furnished experienced and trained personnel, I have either had to function without a secretary and hearing assistant or was furnished untrained and inexperienced help.

To substantiate my contention that cases are not being assigned by rotation as required by law is Judge Gitman's statement at a recent meeting of ALJs that a great number of court remand cases are assigned to Judge Neff at his request; also to Judge Bennett in Washington, who likewise is singled out for assignments.

Your statement that my intake of cases exceeded my output to date (i.e., as of April 15, 1977, the date of your

memo) by 10 cases reflects nothing more than correct subtraction on your part. Justice Brandeis cautioned that a judge must bring to his tasks an essential *"morality of mind"* consisting of 4 principal manifestations, the first of which is an *insistence on knowledge as indispensable to judging.* Over the past 3 years, I have observed a patent disinclination on your part to obtain and weigh the facts in matters involving your interests, passions, prejudices, biases and hostilities. Had you taken the trouble to consider the facts you would have learned that 15 cases were assigned to me on April 5, 1977, and the undisposed of cases were awaiting development or hearing.

It is obvious that the so-called "productivity" figures to which so much false importance is attached by the Bureau present a distorted picture, are totally misleading and wreak great harm, inequities and injustices and cost to the taxpayers and are an anathema to the proper administration of justice. They do not reflect the nature and complexity of the case, the type of decision written, whether a one page pro forma dismissal in connection with informal remands, a short-form reversal and whether the judge obtained waivers and disposed of the case on the record without a hearing. Furthermore, they do not show how many decisions of a judge were remanded by Appeals Council and the Courts. To date, I have heard all cases, except one decided on the record. Only a very small percentage of my decisions are reversals. None of my cases have been remanded by the courts and only 2 were remanded by Appeals Council for the purpose of securing post-hearing medical examinations.

A system that perpetrates and perpetuates a fraud upon the public and individuals is an abomination. Truth,

it is wisely stated, is always in tune and flourishes only in an atmosphere of free discussion. A spurious character like a counterfeit coin will ultimately be retired from circulation; a genuine person is anxious to be found out, a phoney is afraid he will be.

Please furnish me with a copy of the Bureau policy referred to in your memo on which you rely in refusing to assign me cases according to law.

(s) Wanda P. Chocallo

cc:
Joseph A. Califano, DHEW Secretary
Robert Trachtenberg, BHA Director
Philip Brown, Chief ALJ, BHA

EXHIBIT H—68

MEMORANDUM

Department of Health, Education and Welfare
Social Security Administration

To: James C. Lightfoot, Administrative Law Judge In Charge

From: Wanda P. Chocallo, Administrative Law Judge

Date: April 6, 1977

Refer to:

Subject: Case Assignments

The last case assignment given me consisted of 25 cases and was made on January 21, 1977. Since that

time, only 3 other cases have been transferred to me, which makes a total of 28 cases assigned this year.

As a result of a conversation regarding a possible assignment between my hearing assistant and the Administrative Officer, 25 Region II, Smithtown, New York cases were assigned to me on Friday, April 1, 1977.

On Monday, April 4, 1977, my hearing assistant was requested to return those same Smithtown cases. It is noted that of those 25 Smithtown cases, 15 were Title II and 10 were concurrent.

The Administrative Officer said the request came from you, and she could not offer any explanation. When asked if we would receive another assignment, the Administrative Officer still could not say.

Yesterday, April 5, 1977, 15 Phila. cases (10-Concurrent; 3-SSI; 2-SSA) were assigned to me and it was also learned that the Smithtown cases were reassigned to Judge Neff.

Therefore, I would like an explanation from you stating why the Smithtown cases had to be returned only to be reassigned to Judge Neff, especially since this unit has been assigned only 28 cases in the past three months while Judge Neff received 60 cases during the same period of time.

The law provides that cases must be assigned by rotation. It is obvious they are not being so assigned.

In addition, please explain why the other judges have been and are being provided staff attorney assistance and this unit has never had same.

(s) Wanda P. Chocallo

Complaint
Exhibit H—73

EXHIBIT H—73

MEMORANDUM

Department of Health, Education, and Welfare
Social Security Administration

To: Wanda P. Chocallo, Administrative Law Judge (T), Philadelphia Hearing Office, BHA

From: Office of the Chief Administrative Law Judge, BHA

Date: Sep 28, 1976
Refer to: IHA-11

Subject: John Coleman

Attached is a copy of a letter dated September 17, 1976, from claimant's counsel in the subject case in which she requests my assistance in having a decision issued.

Without having the file before me, I can make no judgment as to the merits of the allegations made by counsel. But I am disturbed by the amount of time that has expired without claimant having received a decision in his case.

I cannot emphasize strongly enough my concern about the allegations made by counsel. At this point in time the only way in which the merits of the allegations can be properly considered is for the Appeals Council to review the case. In the absence of a decision containing your reasons therefor, the Appeals Council would be handicapped in any such review. This would be a disser-

vice not only to the claimant and you but to the administrative appeal process itself, the integrity of which is essential if we are to provide the public service for which we are responsible.

Because of the lengthy amount of time that has expired since the hearing without a decision having been made by you, I believe that you should provide both claimant and the Bureau with a statement as to when your decision will be issued. You should advise me no later than the close of business October 8, 1976, when you expect to issue your decision.

(s) Philip T. Brown
Philip T. Brown
Chief Administrative Law Judge

Attachment
cc:
(Illegible)
Ms. Linda M. Bernstein
Mr. Doe

OCT 5 1976

Complaint
Exhibit H—74-75

EXHIBIT H—74-75

COMMUNITY LEGAL SERVICES, INC.

Law Center North Central
Beury Building
3701 North Broad Street
Philadelphia, PA. 19140
215—227-2400

September 17, 1976

Phil T. Brown
Chief Administrative Law Judge
Bureau of Hearings and Appeals
Box 2518
Washington, D.C. 20013

Re: John Coleman

Dear Judge Brown:

I am writing you as a last resort in the continuing struggle of Mr. John Coleman age 74 and blind, to obtain a fair hearing on the question of his entitlement to SSI benefits. A hearing was held by Ms. Wanda P. Chocallo of the Philadelphia Bureau of Hearings and Appeals on December 29, 1975. A description of Ms. Chocallo's conduct prior to the hearing and at the hearing is amply set forth in my letter to Judge James Lightfoot dated December 31, 1975, a copy of which is enclosed. But injudicious, intemperate and unseemly behavior on the part of Ms. Chocallo did not end with the hearing in December.

Complaint
Exhibit H—74-75

On approximately January 20, 1976 Mr. Coleman and I received notice of a continued hearing, called for the purpose of obtaining additional testimony from the claimant and the claimant's witness, Linda M. Bernstein. This was astonishing to us in view of the fact that the December 29th hearing had been quite lengthy, that Ms. Chocallo had ordered me out of the room during it, and had badgered Mr. Coleman so unmercefully he had a pounding chest and wished to give up altogether. When Mr. Coleman became so upset by Ms. Chocallo's treatment we asked for a recess which she refused.

Mr. Coleman and I were convinced that Ms. Chocallo would not render a fair decision and that no purpose would be served by putting on any more testimony. We replied to the notice of continued hearing that we would not appear and would stand on the record we had developed.

Subsequently she subpoenaed us both to another hearing, and introduced out of the blue an overpayment issue into the case. Recently she sent me over 70 pages of new documents she was introducing into the record over my objection. I am convinced that this latest episode is a retaliatory action against Mr. Coleman, motivated by ill-will towards me for complaining about her conduct to her supervisors. This is unconscionable to me that she would use her position as a supposedly impartial judge to harm an innocent, elderly blind man.

For the past eight-months I have been trying unsuccessfully to get a decision in the case. My client's appeal rights have already been severely prejudiced. As you know federal regulations require non-disability issues to be

concluded within 90 days, and that by now Mr. Coleman would have probably completed the steps which the Secretary requires for §405(g) jurisdiction in federal court.

I have never experienced anything like this before. I do not think I was contentious or impertinent to Ms. Chocallo—I think the transcript if ever one is made, will show that it was the hearing examiner who completely lost her temper and her decorum and not the claimant and his representative. The fact that for 9 months she has made such a protracted battle out of this small case is clear evidence of her prejudice and ill-will.

If you can bring your office to bear us the resolution of this matter I will be quite appreciative.

Very truly yours,
(s) Linda M. Bernstein
Linda M. Bernstein
Senior Staff Attorney

LMB/nd
encl.
cc: Judge Sol Gitman
Bureau of Hearings and Appeals—Regional Office
Box 8788
Philadelphia, PA 19101
Mr. John Coleman

EXHIBIT H—78-79

Department of Health, Education, and Welfare
Social Security Administration
1528 Walnut St., Philadelphia, Pa.

[Seal]

Bureau of
Hearings and Appeals

Certified mail-return receipt requested

April 28, 1976

David Mathews, Secretary
Department of Health Education and Welfare
Washington, D. C.

Dear Mr. Secretary:

On February 29, 1976, I reported to you the unlawful actions of the officials of the Bureau of Hearings and Appeals named therein, who interfered in my quasi-judicial functions as an Administrative Law Judge and in my full and complete individual independence of action and decision and without review, which is explicitly prohibited by the Administrative Procedures Acts, etc. and the conditions of my appointment, as well as other alleged illegitimate practices, and requested that an investigation be conducted. SSA Administrative Directives System, Guide (SSA.g:196-0) provides that it is the SSA policy to resolve allegations or questions of suspected violations of law and regulations by making an in-depth investigation.

Complaint
Exhibit H—78-79

No response from you has been received by me to date. On April 8, 1976 I received a communication from Mr. Robert Trachtenberg, Bureau Director dated April 5, 1976, a copy of which is enclosed. Mr. Trachtenberg's letter, I respectfully submit, clearly contravenes HEW Personnel T.S. 696, Personnel Guides for Supervisors, Chapt. VIII, Guide, which provides:

> "An employee has the right to file a complaint, a grievance, or an appeal under the procedures of this Department or the U. S. Civil Service Commission without interference or threat of reprisal. An employee acting in an official capacity for the Department or one of its agencies shall not interfere with or attempt to interfere with the filing of such complaint, grievance, or appeal, or take or threaten to take any act of reprisal (including, but not limited to, discharge or other disciplinary action, denial of promotion, or adverse performance evaluation) against an employee because he has filed, or expressed an intention to file, a complaint, a grievance, or an appeal. Supervisors are expected to comply with the spirit as well as the letter of this policy by not only abstaining from overt acts or threats or interference but also by refraining from making any statement or taking any action that implies a threat, interference, or intimidation."

I consider it my duty to speak out if the rule of law is threatened.

Any public official who fails to obey, uphold and defend the law and to exercise his public powers and duties

within the framework of the law, as he is bound to act, but condones and participates in illegitimate and unethical practices, commits a serious breach of his public trust and becomes a menace to society. This was forcibly demonstrated by the Watergate scandal.

Under the circumstances recited above, an official statement from you as Secretary of the Department of Health, Education and Welfare is warranted as to whether my request that the alleged unlawful actions be investigated is contrary to Departmental policy so as to subject me to reprisals and harassment.

Sincerely yours,

(s) Wanda P. Chocallo
Wanda P. Chocallo
Administrative Law Judge

Enclosure

cc: Mr. Robert Trachtenberg

Complaint
Exhibit H—80

EXHIBIT H—80

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration
P.O. Box 2518
Washington, D.C. 20013

[Seal]
Refer to:
IHA-63

Bureau of
Hearings and Appeals
05 APR 1976

Ms. Wanda P. Chocallo
Hearing Examiner
Bureau of Hearings and Appeals, SSA
1528 Walnut Street
Philadelphia, Pennsylvania 19102

Dear Ms. Chocallo:

Your letter of February 29, 1976, to the Secretary has been referred to me for reply.

At the present time, I have decided to recommend that an adverse action be taken against you. Accordingly, it would be inappropriate for me to reply to matters which relate to such action. I have carefully considered the material you submitted in making my decision. If my recommendation for an adverse action is accepted, you will be advised of your rights and given an opportunity to present your case.

If your letter to Secretary Mathews was intended as a grievance, please notify Robert M. Whitehead, Employee

Complaint
Exhibit H—80

Relations Section, Personnel Management Branch, Room 307, Webb Building, Box 2518, Washington, D.C. 20013, who will provide you with guidance on the appropriate procedure.

Sincerely yours,

(s) Robert L. Trachtenberg
Robert L. Trachtenberg
Director

Complaint
Exhibit H—81

EXHIBIT H—81

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

Social Security Administration

[Seal]

CONFIDENTIAL-PERSONAL
CERTIFIED MAIL

Refer to
David Mathews, Secretary
Dept. of Health, Education and Welfare
Washington, D.C.

Bureau of
Hearings and Appeals
1528 Walnut St.
Philadelphia, Pa.
March 8, 1976

Dear Mr. Secretary:

I was discreetly warned that ACRCALJ Sol R. Gitman, in furtherance of his threats to remove me, requested personnel to spy on me and bear false witness against me. This corroborates the contentions contained in my February 29, 1976 letter to you and correspondence attached thereto. As indicated by me, it would be foolhardy and dangerous for me to participate in any conversations with Judges Gitman, Lightfoot et al., or with anyone acting at their direction, without my having such conversations fully taped for my protection.

Dr. Stanley Milgram of Yale University, in his recent book *"Obedience to Authority"* demonstrates the extent to

which ordinary people will obey authority, even to the point of injuring another person. He concluded that conscientious people, not ogres, all too easily knuckle to malevolent authority. Psychiatrists and professors of psychology predicted initially, what they thought the results would be and they all underestimated how explicitly normal people will obey authority. In fact, the results of his studies so surprised Dr. Milgram, that he expressed dismay at how readily Americans will obey an authority figure, even to the point of compromising their scruples. Nazi Germany, the Watergate and CIA scandals offer classic examples of this kind of behavior. Nice people since have sincerely vowed that such will never occur. But Dr. Milgram's experiments clearly demonstrate that such can happen again, and to use his own words, such prospect "disturbs" him greatly.

No security measures are provided by the Bureau, as required by Departmental regulations, for the protection of confidential files, equipment and personal belongings. Since desperate men resort to desperate measures, I am fearful that these individuals will attempt to remove, tamper, destroy, secrete, etc. files, equipment, etc. in an effort to discredit and impute wrongdoing to me. Therefore, it is most imperative and urgent that the investigation requested by me be initiated as expeditiously as possible.

Sincerely yours,

(s) Wanda P. Chocallo
Wanda P. Chocallo

Administrative Law Judge
cc: Congressman Daniel J. Flood

Complaint
Exhibit H—82-86

EXHIBIT H—82-86

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

MEMORANDUM

Social Security Administration
Refer to:
Date: February 27, 1976

To: Robert L. Trachtenberg, Director, BHA

FROM: Wanda P. Chocallo, Hearing Examiner, BHA

SUBJECT: Your Memorandum of February 17, 1976

The contents of your communication of February 17, 1976 abrogate the facts, the law, public and private rights and interests and the fundamental concepts of justice and fairness.

Our mutual fealty is owed to a common employer; viz., the general public. I have discharged my public trust with utmost fidelity to the citizens, the claimants, the law, my oath of office and, last but not least, to myself. My conduct and performance I assure you, can withstand the closest scrutiny. Conversely, based on my personal experience over the past year and a half, the Bureau has been patently remiss in the discharge of its administrative duties and powers to the point of nonfeasance, misfeasance and malfeasance, while unlawfully usurping quasi-judicial authority and interfering in my quasi-judicial functions.

Complaint
Exhibit H—82-86

Good conscience and truth dictate that I have accredited myself in an exemplary and rather extraordinary manner under most adverse, onerous, discriminatory and harassing circumstances. My achievements, I feel, speak for themselves and warrant no apology. However, I am duty bound to remonstrate your denunciations and to point out a few significant and relevant facts.

First, let me remind you that Philadelphia is the only major city in the nation with only one SSI Hearing Examiner on duty. Four SSI Hearing Examiners were appointed to serve in Philadelphia, three of whom are close personal friends of the regional ACALJIC and who have never assumed the duties of such appointment. To date, I have been the sole SSI Hearing Examiner on duty in the Philadelphia office with exclusive responsibility for conducting the entire operations of the Philadelphia SSI Hearing Office. Until 2 Hearing Examiners were appointed to the Delaware office and 1 to the Harrisburg office, I also handled all Delaware and Harrisburg and environs cases. In addition, I was assigned 40 Baltimore cases. Unlike Washington, D.C., Wilmington, Harrisburg and other areas throughout the country, no SSI Hearing Office, with a full complement of supplies, equipment, staff, etc., as provided by law, was established in Philadelphia. Ironically, Washington, with a minimal amount of cases, was provided with a fully established office with 3 Hearing Examiners, 4 hearing assistants and 3 secretaries. Delaware and Harrisburg, too, had fully equipped and established offices though unoccupied for sometime.

I literally was shifted from pillar to post in borrowed space rented for Regional SSI Appeals Council (which,

incidentally, never assumed occupancy) and in effect, had to beg, borrow and appropriate necessary furniture and equipment and *personally move* same in order to set up offices for my staff and myself as well as a hearing room so that I could function. *Moreover, in less than one year, I was required to move to three different locations.* Though this office has had full responsibility for all SSI cases, including keeping a master docket of all SSI cases, I have been operating with a limited staff. The hearing assistant originally assigned to me, who had prior experience and was specially trained for SSI work, was reassigned last year to the regional ACALJIC. I was assigned an inexperienced hearing assistant who had received no special SSI training. Much of my time, consequently, is expended in training, orienting and assisting her in her work. My secretary has been absent a greater part of the year because of ill health. Such substitute help as was furnished is neither competent nor equipped to handle even typing of decisions. My protests and pleas for competent and adequate assistance remain unheeded.

On March 25, 1975 (as supplemented by my letter of March 26, 1975), I wrote requesting a conference with you at your earliest convenience so that the numerous obstacles and problems encountered by me in operating and managing the Philadelphia SSI Hearing office that "impeded maximum day-to-day efficiency, productivity, economy and morale" could be effectually resolved "to insure optimum service and high quality results to the public." On April 18, 1975, you advised you could not meet with me but the Bureau's Division of Administration would assess my needs and "take speedy and necessary action."

This was never done. On April 15, 1975, a copy of my self-explanatory memo bearing the same date, addressed to the regional ACALJ was sent to you for appropriate action. *Again, nothing was done.* Any prospective assistance, however well-intentioned, (which, frankly, I do not anticipate will be forthcoming if past events are a barometer for the future) can never retroactively or "nunc pro tunc" cure or ameliorate the adversities suffered from the Bureau's past sins of omission and commission.

The very brief interlude of time provided for a response to your memorandum of November 20, 1975, as indicated in my initial reply of November 26, 1975, raises serious questions concerning the bona fide intent and purpose thereof. Certainly, sufficient time was not allowed for the patient pursuit of data necessary to chronicle the events of more than a year, the cautious combination and comparison of them and their proper presentation and documentation. "The first step towards improvement," as Justice Holmes wisely admonished, "is to look the facts in the face." And, as was pertinently stated by Emerson: "No picture of life can have any veracity that does not admit the odious facts."

Frankly, your definition of the "national average" of SSI Hearing Examiners, the specific standards and criteria established for evaluating productivity and the legal basis therefore are entirely obscure to me. Apparently they materially differ from the standards governing my duties, responsibilities and independence of action as explicity set forth in my job description and the Administrative Procedures Acts and the basis on which I was appointed. My job description states: "The Social Security and Administrative Procedures Acts prohibit substantive review and

supervision of the incumbent in the performance of his quasi-judicial functions . . . *The hearing examiner is subject only to such administrative supervision as may be required in the course of general office management.*" The following statement appears in BHA Handbook 1-14: "Thus Hearing Examiners are not included in the annual service rating program applicable to most other Civil Service employees for the purpose of measuring and recording efficiency."

An assessment based on tenuous grounds, such as your quota system, does grave violence to the law as well as to public and private rights. Your preoccupation with numbers, which has been criticized and unfavorably assayed by others, spawns an illegitimate measuring device and produces unrealistic and fictional statistics. Unlike farthings and shillings, justice cannot be counted. It must be weighed. Moreover, it should never be subservient to expediency. Quick or instant disposition of cases proliferates error, remands and increased expenditures of public funds. In proper perspective of accomplishment, it may turn out that the contribution of those who dispense justice qualitatively rather than quantitatively, on the balance may be considerably greater. The duties of the administrative law judge-examiner involve much more than conducting a statistical marathon. One should learn to practice the precepts enunciated by Justice Learned Hand, who sagely said: "A man's work, like a piece of tapestry, is made up of many strands which interwoven, make a pattern; *to separate a single one and look at it alone, not only destroys the whole, but gives the strand itself a false value.*"

Complaint
Exhibit H—82-86

The enclosed detailed report prepared by me, entitled *"Data re Factors Affecting Productivity of Philadelphia SSI Hearing Office and Service to the Public,"* prefaced by "Background Data", delineates the areas wherein the Bureau failed to facilitate the work of the Hearing Examiner and promote efficiency pursuant to its obligations under applicable laws, rules and regulations. Copies of correspondence referred to therein cannot be furnished at this time since I do not have help available for the work involved. As a matter of fact, because of personnel limitations all of the typing and duplication in connection with this "project", have been done by me personally.

I do believe the Bureau owes me an explanation as to why it is unable to perform *simple routine administrative tasks* efficiently and expeditiously e.g., (1) Why it took *more than 4 months* to transmit memo dated July 7, 1975 from the Director re: "Utilization of Magnetic Media in Decision Writing" and why it failed to include Section G. (2) Why it took *more than 3 months* to transmit memo dated October 3, 1975 from the Director re "BHA Standardized Material for Hearing Offices." (3) Why it never informed the writer of Interim Circular No. 55, dated Sept. 15, 1975, and Form SSA-5000 and did not furnish same until requested by the undersigned after she learned thereof from the Baltimore Hearing Office. (4) Why the Director's memo dated January 19, 1976 re "Transfers" was not received by the undersigned until February 26, 1976. (5) Why the simple task of furnishing Standard Collegiate Dictionaries requisitioned by me has not been executed during the past 1½ years despite numerous requisitions, repeated requests, memos, etc. (6) Why, although I as-

sumed my official duties in July 1974, no fully furnished and equipped SSI Hearing Offices had been established in Philadelphia although fully furnished and equipped offices were established in Wilmington, Delaware, and Harrisburg, Pa. and rentals paid therefor for sometime despite the fact that they remained unoccupied until Hearing Examiners reported for duty in 1975. (7) Why Regional SSI Appeals Council Offices (involving approximately 10,500 square feet of space), fully furnished and equipped, were established in the Gateway Bldg., 3636 Market St., Philadelphia, Pa. and rentals paid therefor though vacant and never occupied by Council while no SSI Hearing Offices, fully furnished and equipped, were established in Philadelphia although I assumed my official duties in July 1974. (8) Why it was necessary for me and my staff to move on June 7, 1975 from the space utilized by us in the Gateway Bldg., 3636 Market St., Phila. to 1015 Chestnut St. and on or about August 15, 1975 to move from the latter address to 1528 Walnut St. when the space vacated by us at 3636 Market St. remained unoccupied as late as August 1975. (9) Why fully furnished and equipped offices were established in the Gateway Bldg., 3636 Market St., Philadelphia for a Black Lung Development Center and rentals paid therefor which remained unoccupied for over a year and never in fact was utilized therefore while no fully furnished and equipped hearing offices were established in Philadelphia although I assumed my official duties in July 1974. (10) Why the work of the Regional SSI Development Center, established for the purpose of developing cases and endowed with a full complement of high paid analysts, was transferred in February 1975 to the SSI Hearing Office without any provisions for assigning addi-

tional personnel or analysts from the Center to assist in the discharge of the increased duties shifted to the Hearing Office. (11) Why Title II judges, who administer an old, tried and tested law, and who, in most cases have been on duty for years, are furnished analysts, law clerks, attorneys and experienced hearing assistants, while SSI Hearing Examiners, who administer an entirely new and untested law, are expected to function without hearing assistants, secretarys, analysts and are not provided with an adequate, qualified and competent staff. (12) Why the Bureau, pursuant to its administrative responsibilities to facilitate the work of the HE, failed to secure and furnish copies of the State Plan in effect in October 1972 and approved under Title XVI, as defined in Section 416.160(b) of Regs. No. 16 for the aged, blind and disabled. (13) Why the simple task of providing telephones for the SSI Unit was not properly and expeditiously attended to but was unduly delayed and required numerous requests, inquiries, etc. (14) Why substitute help requested is furnished from the Transcript Typing Unit, whose personnel does not possess the basic qualifications and competency required for doing the work involved, nor essential skills. (15) Why we must be hampered and hindered by the preparation of mountains of time consuming reports, e.g., monthly, bi-weekly and weekly reports, etc., resulting in the expenditure of many man hours, and astronomical sums of public monies when, apparently, they are not read and serve no worthwhile purpose. The annotations contained on the undersigned's monthly reports obviously have not been noted since they explained some of the problems confronting this office.

The administrative deficiencies that preponderate suggest that if those vested with administrative obligations

cease and desist from interfering in quasi-judicial functions proscribed by law and the productivity of administrative law judges-hearing examiners and divert and concentrate their attention and efforts towards improvement of administrative productivity and efficiency the ends of justice and the public interests would best be subserved.

My appointment was predicated upon my outstanding personal and professional credentials, consisting of more than 25 years experience as a recognized and respected trial attorney and private practitioner, who also served with distinction the Judicial and Executive branches of government—state, federal and local. Bear in mind that I was selected because of my "expert knowledge of judicial practice; exceptional professional attainments; a capacity for analysis and articulation; the ability to balance important and confliciting considerations and a proven ability to assure a fair hearing." I was not appointed because of any political or other pressures or influences. The statements contained in your memorandum constitute a serious affront to a person of my professional attainments and personal caliber. They not only are intimidating in essence but unlawfully usurp my *"full and complete individual independence of action and decision and without review"* assured by law and my job description.

Any official who fails to exercise his public powers and duties within the framework of the law, as he is bound to act, but condones and participates in illegitimate and unethical practices commits a serious breach of his public trust and becomes a menace to society. I consider it my duty to speak out if the rule of law is threatened. I am, therefore, addressing myself on these important issues to

the Secretary of the Department, whom I represent by virtue of a direct delegation of authority, with a request that they be fully investigated.

Enclosures

(s) Wanda P. Chocallo

P.S. According to my information, the Bureau has a reputation for resorting to discriminatory tactics in order to eliminate women judges and make their work most difficult of performance.

Complaint
Exhibit H—87-88

EXHIBIT H—87-88

MEMORANDUM

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Social Security Administration

ADMINISTRATIVE CONFIDENTIAL

Date: 17 FEB 1976
Refer to: IHA-A

To: Wanda P. Chocallo, HE, Philadelphia Hearing Office

From: Office of the Director, BHA

Subject: Hearing Officer's Responsibilities and Interrelationship with ALJIC and RCALJ

I have closely reviewed the events which have transpired in the John Coleman case, the related events, and the two memorandums you have addressed to me. It appears that you have grossly misinterpreted the decisional independence of a hearing officer to the extreme point of non-accountability. In addition, you evidently have a misunderstanding of the purpose of the hearing process. Such misinterpretation and misunderstanding on your part has adversely affected service to the public and has interfered with the ability of the ALJIC and RCALJ to perform their functions.

The basic purpose of the hearing process for which we are responsible is to provide a more simple, convenient,

and expedient avenue of appeal where an individual or other party disagrees with an administrative act than that afforded by the judicial process. It was devised to better serve the public and this Bureau is committed to providing the public with an appeal mechanism that is as convenient and as timely as possible under the circumstances.

The failure of a hearing officer to appear at a scheduled hearing and to later require a 74 year old blind claimant to attend a hearing which, at least at the initial stage of the hearing, concerned legal arguments is a disservice to the individual and adversely affects our service to the public. It is the *responsibility* of the hearing officer when he or she cannot appear at the time and place of the scheduled hearing to give or arrange for prompt notice to the parties. In addition, the claimant's convenience should be taken into consideration in scheduling a hearing. See BHA Handbook section 1-72 as to the Bureau policy on the scheduling of hearings. Where a legal question must be decided, which may negative the need to take oral testimony, favorable consideration should be given to a request for a limited hearing to decide the legal question where the claimant's appearance could cause a hardship.

If we are to timely provide effective administrative justice, it is imperative that we provide prompt hearings and decisions. I have personally directed my efforts to this matter and this Bureau has in the past year made considerable advances in this area. However, we cannot accomplish this without full production by each and every one of our presiding officers. Your production over a protracted period of time has been very discouraging. I recognize that the HEs have experienced some staff support

problems and, in some areas, the expected workload has not materialized. However, the staff support problem has been largely corrected and, in your case, you have more than an adequate workload. I can't perceive of any reasons for your continued low production. The report you intend to submit to me should address this issue and should be in my hands by *February 27, 1976.*

The ALJICs and RCALJs are held fully responsible for the Bureau's activity in their respective areas. They must exercise effective control over their offices and the personnel therein in order to oversee the hearings operation to insure that the public is being adequately and courteously served. This requires that they take effective steps to process the workload. On the other hand, they are not permitted to interfere with the hearing officers *decisional* independence. It is your duty to fully cooperate with them.

I fully support the efforts of the ALJIC and the RCALJ in their efforts to insure courteous and timely service to the public. In my opinion, they would have been remiss in their duties if they had not inquired into the allegations made as to your nondecisional handling of the Coleman case and your continued low production. Your actions in assuming a posture of non-accountability to them has bordered on insubordination.

As a Government employee you have a duty to conform to all rules and regulations, including the proper requesting of sick and annual leave. You also must produce an acceptable volume of work. While you have decisional independence, you are administratively accountable to your RCALJ and to the ALJIC, his delegate.

I earnestly request that you take immediate steps to increase your productivity and to establish a proper rapport with your ALJIC and RCALJ. In turn, I am requesting them to lend you any assistance needed to improve your production and any guidance needed. We have a formidable task facing us which can only be accomplished if we work together as an effective team.

(s) Philip T. Brown
Philip T. Brown

EXHIBIT H—96-97

January 29, 1976

James C. Lightfoot
Administrative Law Judge in Charge
Bureau of Hearings & Appeals
1528 Walnut St., Phila., Pa. 19102

Re: Mr. John Coleman

Dear Judge Lightfoot:

Thank you for your letter of January 8, 1976. I too thought that the case had been concluded on the merits, after the exhaustive (and exhausting) hearing on December 29, 1975. However, Judge Chocallo has scheduled another hearing and has declined to apprise us of the reason therefor or of the regulations authorizing another hearing.

Complaint
Exhibit H—96-97

Mr. Coleman is unable to attend another hearing in light of his advanced age, physical condition, and the anxiety to which the last hearing subjected him. Mr. Coleman has notified Ms. Chocallo in writing that he waives his right to appear, and he will stand on the record as developed up to this point.

Since Mr. Coleman believes that Judge Chocallo has not been fair and impartial in her handling of this case, he would in any event decline to appear before her again.

I would like a copy of this letter placed in the record of this case.

Thank you for your attention.

Yours very truly,
Linda M. Bernstein
STAFF ATTORNEY

Complaint
Exhibit H—101

EXHIBIT H-101

MEMORANDUM

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Social Security Administration

Date: January 7, 1976

Refer to:

To: James C. Lightfoot, Administrative Law Judge in Charge

From: Wanda P. Chocallo, Administrative Law Judge

Subject: Hearing of John Coleman, and letter dated December 31, 1975 from Linda M. Bernstein, Esq.

I am shocked by the nature of your memorandum of January 6, 1975, concerning the subject case. It clearly, inter alia, infringes upon my independence as the presiding judge, attempts to influence my actions in a case presently within my exclusive jurisdiction and constitutes a breach of professional responsibility and ethics and a violation of basic law.

I will not comment either verbally or in writing upon the contents of Mrs. Bernstein's communication addressed to you other than to state that her actions and letter seeking your intervention in a case pending my decision on the merits constitute a serious breach of her professional obligations under the Canons of Ethics and a contempt of court.

Complaint
Exhibit H—101

While this case is within my jurisdiction, I will not condone or permit it to be litigated or argued by counsel or claimant, nor will it be discussed or decided other than in the proper forum, in the proper manner and in accordance with applicable statutes, procedures, regulations and appropriate precedents; in addition, the rulings made by me in this case must be complied with.

I was appointed because of my professional integrity, competency and sense of responsibility. It is my duty under the law and regulations, of which I assume you are aware, to reach my own conclusions on the basis of the facts and law; *to make independent decisions free from any influence which might affect impartial judgment as to the facts.* In rendering my decision here, as in every case before me, I will not be intimidated, compromised or unduly influenced by counsel, claimant or any other person but will predicate it solely upon the evidence adduced at the hearing as required by law.

(s) Wanda P. Chocallo
Wanda P. Chocallo

Complaint
Exhibit H—102

EXHIBIT H-102

UNITED STATES GOVERNMENT
MEMORANDUM

Date: January 6, 1976

To: Wanda P. Chocallo, Administrative Law Judge

From: James C. Lightfoot, Administrative Law Judge in Charge

Subject: Hearing of John Coleman and Letter of Linda M. Bernstein, Esq., dated January 31, 1975

I have just received the letter from Linda M. Bernstein, Esq. dated December 31, 1975, concerning the above matter. I am not attaching a copy of her letter to this memorandum, since I understand a copy was sent to you. In view of the numerous allegations made in this letter, I assume that you will want to respond to this both orally and/or in writing. It would appear, in view of the statements made, that you should seriously consider voluntarily recusing yourself from further participation in this case. I suggest that you consult Part 1 of the BHA Handbook, Section 1-66. I believe you should and anticipate that you will give your version of the entire matter to me before it goes any further. I shall await your reply.

(s) James C. Lightfoot
James C. Lightfoot

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

Complaint
Exhibit H—103-106

EXHIBIT H—103-106

COMMUNITY LEGAL SERVICES, INC.

Sylvania House
Juniper and Locust Streets
Philadelphia, PA 19107
215—893-5300

December 31, 1975

Judge James C. Lightfoot
Chief Administrative Law Judge
Bureau of Hearings and Appeals
1528 Chestnut Street
Philadelphia, Pennsylvania 19102

Re: Hearing of John Coleman, 198-28-3344

Received Jan 6, 1976. BHA SSA

Dear Judge Lightfoot:

I am writing to bring to your attention a problem I have had with Ms. Wanda P. Chocallo hearing examiner. The problem came to a head in a hearing held December 29, 1975, but in order to understand this situation, I must give some background information.

A hearing was originally scheduled for December 3, 1975 on Mr. Coleman's appeal from a reduction in his SSI. Mr. Coleman and I were present at that time, but unfortunately, Ms. Chocallo was not. We were told that she had not been in the previous two days and her hearing assistant had not heard from her. Mr. Coleman and I

waited for one half an hour and finally left. No explanation or apology was forthcoming from Ms. Chocallo concerning this occurrence, and the next communication we received from Ms. Chocallo was simply a form letter rescheduling the hearing.

I therefore wrote her a letter (a copy of which is enclosed) detailing my suprise that no explanation or apology had been offered, and proposing that we not ask Mr. Coleman, a seventy-four year old blind man, to travel to another hearing unless it was absolutely necessary and suggesting that a two stage hearing be held. At the first part I would make legal arguments: only if these arguments were accepted by the hearing examiner would there be any need for Mr. Coleman to come and give testimony. The only response I got to this letter was a phone call from Ms. Chocallo's hearing assistant saying that the client was required to come to the hearing.

This brings us to the hearing of yesterday. I have never been subject to more personal vilification by any judicial official than was contained in yesterday's hearing. Ms. Chocallo completely lost her temper, ordered me out of the room, which I refused to do, said I was the most impertinent attorney that had ever appeared before her, and other such epithets. The beginning of the problem yesterday was her lengthy inquiry of Mr. Coleman as to what his grounds for a late filing of his request for a hearing were. As was contained in a letter which I wrote with the request for a hearing, the lateness of the request was due entirely to Community Legal Services' negligence. Mr. Coleman, in fact, had no knowledge that his request for a hearing had been filed late, since he very promptly

sent us his notice of reconsidered decision. In spite of this letter in the file and in spite of a notation saying that good cause had been found, Ms. Chocallo cross examined Mr. Coleman for a good forty-five minutes concerning why he had filed his request late. Mr. Coleman assumed he had filed promptly and attempted to answer questions on that basis. Since he had not filed the request in person himself, he had no memory of doing so, but did remember going in to file his request for reconsideration, which he explained. Ms. Chocallo harangued him and badgered him with such things as, "This is extremely important to your case, you must remember what you did." "Did you do anything at that time?" "What did you do at that time?" "You are an extremely intelligent man, why don't you remember?" I could not in good conscience sit still while my client struggled to remember something which had not occurred, so I objected to the questioning and attempted to be allowed to refresh Mr. Coleman's memory (which I successfully did when I was finally allowed to question him.) My attempt to jog Mr. Coleman's memory provoked Ms. Chocallo to make extremely hostile and disparaging remarks about me and to intimate that I was trying to give him the answers. Her assumption seemed to be that I had fabricated the explanation out of whole cloth. At one point when Ms. Chocallo repeated again that Mr. Coleman had better answer because this was extremely important to his case, Mr. Coleman—said that he couldn't answer because his heart was pounding too hard, and that if she wanted to dismiss his appeal right then, she could because he was so upset. I then asked for a recess, which request was refused, but Ms. Chocallo ordered me to leave the room.

Complaint
Exhibit H—103-106

When it was finally my turn to examine Mr. Coleman fortunately I had several items in the file which could refute Ms. Chocallo's intimations that Mr. Coleman had not taken any action in a timely manner. For instance, I had my file with me which was stamped "opened" on July 31st. I also had two envelopes which I introduced into evidence whose post marks were July 15th and July 17th from Mr. Coleman to myself at Community Legal Services which envelopes Mr. Coleman had used to send in his letters of proposed action and reconsidered decision.

When we got to the merits of the claimant's case, Ms. Chocallo was equally vituperative. I questioned Mr. Coleman about his personal expenses, one of which was a second mortgage. Ms. Chocallo interrupted and began cross examining Mr. Coleman about whether this was a mortgage payment or a loan payment and decided that he had been confused and did not know which it was, when he had all along testified that it was a mortgage payment. This is only one example, there are others which I am sure the record will show.

The record will also show that although Ms. Chocallo encouraged me to speed up my case because of the lateness of the hour, she interrupted my questioning of Mr. Coleman with lengthy irrelevant questioning of her own, seemingly to insure that I would not be able to complete my case.

All in all, it was a horrible experience for anyone to have to go through. That this frail, elderly, blind man was subjected to it is shocking to me, especially by an official of the Social Security Administration which officially

prides itself on courteous service to claimants. I suggest that Ms. Chocallo be removed from this case as she will be unable to render an unbiased decision on the matter. I would like a copy of this letter to be placed in the official record of this case.

Thank you for your attention.

Yours very truly,
(s) Linda M. Bernstein
Linda M. Bernstein
Staff Attorney

LMB:aeo
Enclosure
cc: Lawrence M. Lavin, Executive Director, Community Legal Service; Wanda P. Chocallo, Hearing Examiner

AMENDED COMPLAINT (FIRST)

The Complaint in the above case is hereby amended to include the following additional defendants and additional averments. All averments of the original Complaint, Paragraphs 1 to 48, inclusive, are incorporated herein by reference and made a part hereof.

49. Jurisdiction of this Court arises under 42 U.S.C. 1383 (c) (3) and 42 U.S.C. 405 (g) and (h), which grants it jurisdiction to review the findings and decision of the Secretary of Health, Education and Welfare after hearing.

50. Jurisdiction is alternatively conferred on this Court by Section 10 of the Administrative Procedure Act, 5 U.S.C. 701-4; the Declaratory Judgment Act, 28 U.S.C. 2201-2; the Mandamus Act, 28 U.S.C. 1361 and the Fifth Amendment of the United States Constitution.

51. Additional defendant, Joseph Califano, is the Secretary of the Department of Health, Education and Welfare who, under Section 1631 (c) (1) and Section 205 (b) of the Social Security Act, is directed to make findings of fact and decisions as to the rights of any individual applying for payments under said titles.

52. Additional defendant, John C. Coleman, 1526 W. Glenwood Avenue, Philadelphia, Pennsylvania, a recipient prior to December 1973 of State Aid for the Blind, was converted by the Pennsylvania Department of Public Assist. to the Supplemental Security Income program, Title XVI of the Social Security Act, on January 1, 1974.

53. On October 29, 1976, plaintiff, after hearing, made findings of fact and decisions, under direct delegation from the Secretary of Health, Education and Welfare and in the manner prescribed by the Administrative Procedure Act, regarding additional defendant Coleman's rights to supplemental security income benefits. Plaintiff found, inter alia, that Coleman had been employed for thirty-two years and failed to report his earnings to the Pennsylvania Department of Public Assistance and the Social Security Administration, as required by law; that effective January 1, 1976, he as well as his spouse, had been ineligible for supplemental security income benefits for a period of six consecutive months, as a result of excess income, and as of that date the income and resource criteria under federal standards applied; that as of then the criteria under the State Plan in effect for October 1972 approved by the Secretary under Title XVI ceased to apply; that overpayments in the sum of $968.00 were received by defendant Coleman and $1817.34 by his wife during the period January 1, 1974 to August 1976, to which they were not entitled and which resulted from Coleman's failure to report his earnings as required by Law; that the facts concerning fault and the amount of overpayments received by Coleman and his wife were not in dispute; that Coleman was found to be at fault in connection with the overpayment received by him and his wife from January 1974 to August 1976, inclusive, amounting to $2785.42, and repayment and restitution thereof could not be waived. The decision and findings of this case appear as Exhibit H, pp. 1-63 incorporated in the original complaint and made a part thereof.

54. The facts of the aforesaid Coleman case, together with all Exhibits, are more fully set out in the record of the administrative proceedings which must be filed in the Court by defendant Califano pursuant to 42 USC 405 (g).

55. On June 24, 1977, plaintiff received a copy of an Order dated June 15, 1977 of Appeals Council, Bureau of Hearings and Appeals, defendant, stating, inter alia: "The Appeals Council, under authority of section 416.1467 of the Social Security Administration Regulations No. 16 (20 CFR 416.1467) vacates the hearing decision and remands this case to an administrative law judge other than the one who issued the hearing decision of October 29, 1976. The Appeals Council has and does not reach any conclusions regarding the claimant's entitlement to supplemental security income or the proper benefit rate. The administrative law judge shall conduct another hearing and receive the testimony and evidence from the claimant and his spouse, if necessary." A copy of said Order, marked Exhibit "J", is attached hereto and made a part hereof.

56. The aforesaid Order of Appeals Council is null and void in that it violates the express provisions of 42 U.S.C. 205(h), which precludes it from reviewing the findings and decision of plaintiff by expressly stating: "The findings and decision of the Secretary after a hearing shall be binding upon all individuals who were parties to such hearing. No findings of fact or decision of the Secretary shall be reviewed by any person, tribunal, or government agency except as herein provided." Decisions of the Secretary after hearing under 42 U.S.C. 205(g) can only be reviewed by the district court of the United States. Any

regulations promulgated that are inconsistent with the aforesaid provisions violate the Act and are a nullity.

57. The aforesaid Order is improper and invalid for the following additional reasons: (a) The findings of fact and decision of plaintiff are supported by substantial evidence; (b) Defendant Coleman had a full and fair hearing and was afforded every opportunity to present evidence in his behalf and was extended all the protections of the due process of law; (c) Appeals Council applied incorrect standards of law to this case; (d) Appeals Council abused its authority; (e) Appeals Council is not a validly constituted body under the Administrative Procedures Act; (d) Appeals Council under Regs. 416.1467 "may remand to the presiding officer for rehearing, receipt of evidence, and decision any case which it decides to review as provided in Sec. 416.1463 and 416.1465. Where additional evidence is needed, unless the exception in sec. 416.1466 (c) is applicable, the Appeals Council shall remand the case to the presiding officer. Where a case is remanded to a presiding officer, he shall initiate such additional proceedings and take such other action under sec. 416.1433 through 416.1446 as is directed by the Appeals Council in its order of remand . . ."; (e) Appeals Council was without express authority to remand the case to another judge but by regulation is directed to remand the case to the presiding officer; (f) It is prejudicial to the public interests in that it aided and abetted the pattern of improprieties and misconduct exhibited by the Bureau officials, defendants herein, and defendants Linda Bernstein, Coleman's attorney, and Community Legal Services, Inc., as more specifically discussed in plaintiff's decision and averred in the original complaint.

58. Under the Social Security Act, plaintiff has a dual responsibility in that she must not only safeguard the rights and interests of the claimant even when represented by counsel but must also safeguard the rights and interests of the public which is not represented in the proceedings by an attorney or other representative. In such capacity, as well as a member of the public, plaintiff requests the court vacate the aforesaid Order of Appeals Council and affirm the decision issued by plaintiff in behalf of the Secretary; or review it to determine whether the findings of fact are supported by substantial evidence or whether Coleman failed to submit proof in conformity with any regulations prescribed.

59. If the equal protections of the law, to wit 42 USC 405(g) are deemed inapplicable to plaintiff and the public, who then would be without remedy to secure its rights, it is requested a declaratory judgment be issued holding the aforesaid order on its face is in effect violative of the provisions of the Social Security Act and, therefore, null and void. Further, that the Court restrains the Bureau from enforcing the aforesaid Order and grant plaintiff such additional and alternative relief as equity and justice may require.

60. Defendants, Bureau officials, in furtherance of the conspiracy alleged in the original complaint did further intimidate, threaten and injure plaintiff by initiating an adverse action against her with the Civil Service Commission subsequent to her filing this action, copy of which was received by plaintiff on July 9, 1977, and further, by issuing an "error notice", received by plaintiff on August 8, 1977, advising that her absence due to illness in June 1977, supported by a medical certificate, was unprecedently and

arbitrarily, and without prior notice, changed to AWOL and, in addition to the sick leave with which she was charged for the period involved, the sum of $342.48 was deducted from her salary check received August 9, 1977 for the pay period ending July 30, 1977 for the same sick leave days with which she was charged in June 1977; all of which demonstrate that the pattern of harassment and retaliation referred to in the initial complaint has continued since the date of the filing of the Complaint in violation of basic human rights.

Respectfully submitted
Wanda P. Chocallo
Plaintiff Pro Se

Dated August 15, 1977

AMENDED COMPLAINT (SECOND)

The Complaint in the above case is hereby further amended to include the following additional defendants and additional averments. All averments of the original Complaint and previous amendment thereof, Paragraphs 1 to 60, inclusive, are incorporated herein by reference and made a part hereof.

61. Jurisdiction arises under the Civil Rights Act of June 25, 1948, c. 646, 62 Stat. 932, as amended, Title 28 USC section 1343; Title 42 USC section 1985; the Fifth Amendment of the Constitution of the United States; the Administrative Procedure Act, P.L. 89-554, Sept. 6, 1966, 5 USCA 101 et seq.; and the Privacy Act of 1974, P.L. 93-579, 88 Stat. 1897, 5 USC 552a (g) (1).

62. Additional defendants are John W. Ennis and Jack Roseman, Administrative Law Judges, Bureau of Hearings and Appeals, Social Security Administration, Department of Health, Education and Welfare and Claire Kuriger, secretary to defendant James C. Lightfoot, of the aforesaid Bureau, all of whom have offices at 1528 Walnut St., 10th Floor, Philadelphia, Pennsylvania. Said defendants duties and powers are circumscribed by law and they are being sued in their official capacity and their individual and private capacity as well, jointly and severally.

63. While plaintiff was absent from her office because of illness from June 14, 1977 until July 1, 1977, according to information received by her, defendants Ennis, Roseman and Kuriger did, contrary to law, conspire with

defendants Gitman, Trachtenberg, Brown and Lightfoot to hinder plaintiff from her office and from continuing to hold her office and trust; and to impede, hinder, obstruct and defeat the due course of justice within the State of Pennsylvania with the intent to deny its citizens, to wit Pearl Taylor and plaintiff, the equal protection and privileges and immunities of the laws; to injure plaintiff in her property for lawfully enforcing the rights of Pearl Taylor to the equal protection and privileges and immunities of the law and did deprive plaintiff of the equal protections of the laws and the equal privileges and immunities of the laws as hereinafter specifically set forth:

(a) Said defendants, without plaintiff's knowledge and consent and during her absence, did unlawfully break into, enter and search plaintiff's locked office for the purpose of removing the files and tapes in the Pearl Taylor case and for such other improper purposes best known to defendants.

(b) Certain of plaintiff's files are missing and other files, papers, items and materials presently unascertained may likewise be missing.

(c) Said defendants did remove and keep the lock that had been paid for by plaintiff and is her personal property.

64. Defendants actions exceeded the scope of their lawful authority, were contrary to law and the rights and interests of plaintiff.

65. Such willful, intentional, malicious and unlawful conduct did cause plaintiff to sustain current and future damage to her personal and professional reputation, integrity and character; did cause her to suffer mental anguish,

outrage, humiliation, degradation and psychological damage. In addition, she is subjected to mental anguish and strain since she is unable to ascertain at the present time the nature and extent of the articles, files and materials removed from her office. The aforesaid actions of defendants deprive plaintiff of her constitutional rights, privileges and immunities and the equal protections of the laws, her civil rights and her rights to privacy.

66. Plaintiff demands the sum of $500,000 be awarded against said defendants, jointly and severally, both in their individual and official capacities, for damages sustained, together with costs.

Respectfully submitted
Wanda P. Chocallo
Plaintiff

Dated: August 24, 1977

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 77-2310

Wanda P. Chocallo,

Plaintiff

v.

BUREAU OF HEARINGS AND APPEALS, SSA, et al.,

Defendants.

AFFIDAVIT OF ROBERT L. TRACHTENBERG

Robert L. Trachtenberg, being first duly sworn, deposes and says:

1. I have read and am familiar with the allegations contained in the complaint.

2. I am presently and was during the time that events alleged in the complaint occurred the Director of the Bureau of Hearings and Appeals, Social Security Administration, HEW. I am the senior official responsible for the Social Security Administration's hearings and appeals program by direct delegation from the Secretary of Health, Education and Welfare. I am responsible for the planning, direction and integrity of the nationwide SSA hearings and appeals system. As Chairman of the Appeals Council, I am accountable for the rendition of decisions at the highest level of appeal, and I supervise the Secretary's review on his own motion of decisions made by administra-

tive law judges. I direct the review of decisions to evaluate conformity with requirements of the Administrative Procedure Act, CSC and HEW regulations, Bureau policies and procedures, and I initiate corrective action when appropriate. I provide executive, administrative and professional leadership to the administrative law judges as well as the support staff.

3. I did not know the circumstances of the matter referred to as the "Mr. Doe Case" until after most of the events occurred. I was generally aware that Regional Chief Administrative Law Judge (RCALJ) Gitman had attempted to meet with ALJ (T) Chocallo in early January 1976. To the best of my recollection, RCALJ Gitman scheduled a meeting with ALJ (T) Chocallo but she refused to proceed unless she could tape record the session. I believe I referred the matter to CALJ Brown for his necessary action. I do not recall having any personal involvement in subsequent events until on or about February 27, 1976. At that time, Mr. Jan J. Sagett, Deputy Director of the Bureau, received a call from Ms. Rose Lepore, Regional Commissioner, Ms. Lepore informed Mr. Sagett that ALJ (T) Chocallo refused to turn over a case file which was needed in conjunction with a pending law suit. I discussed the matter with Mr. Sagett and agreed that ALJ (T) Chocallo should be directed to surrender the file. I thought the request for the file was legal and reasonable, and that her recalcitrance constituted impermissible interference with government counsel's preparation of a legal proceeding. I was informed that she refused to release the case file after both an oral and written directive was issued to her by RCALJ Gitman. At that time, I made a preliminary determination to institute

disciplinary action against ALJ (T) Chocallo because of her refusal to comply with administrative direction and supervision.

4. During this same approximate time frame, the Bureau of Hearings and Appeals was in the process of implementing PL 94-202 (89 Stat 1137). By terms of the statute, Hearing Examiners—SSI appointed by the Secretary of Health, Education and Welfare to hear claims arising under Title XVI of the Social Security Act (SSI Benefits) were deemed to be administrative law judges until December 31, 1978, notwithstanding the fact that they were not appointed under 5 USC 3105. ALJ (T) Chocallo was hired as a Hearing Examiner—SSI and was a member of the class of employees affected by passage of PL 94-202. Inasmuch as I had tentatively determined to institute a disciplinary action against ALJ (T) Chocallo, the question arose as to whether she should be converted to a temporary administrative law judge since that action involved a promotion from GS-13 to GS-14. I was advised by my personnel officer and other staff officials of the Bureau that a promotion might prejudice a proposed disciplinary action. Accordingly, I decided to withhold the promotion until the disciplinary action was resolved. I further reasoned that if ALJ (T) Chocallo succeeded in her defense on her disciplinary action, her promotion would be retroactive, and thus, she would suffer no monetary damage. In addition, this was novel legislation, the intent of Congress as to grandfathering all Hearing Examiners—SSI was unclear, and there were unresolved questions regarding the scope of the law and other matters which went beyond its immediate effect on ALJ (T) Chocallo. After an exchange of correspondence and discussions with the Civil Service

Commission, I became convinced that ALJ (T) Chocallo should have been promoted as were other former Hearing Examiners. I was assured by the Commission that the promotion would not prejudice the proposed disciplinary action and that it would solve a jurisdictional issue. I instructed the personnel office to undertake the necessary actions to insure that ALJ (T) Chocallo received her promotion retroactive to the date the other former Hearing Examiners were promoted. I do not know how the personnel office did this, but I was later assured that the notation "Retroactive promotion due to administrative error" was correct. I am informed that retroactive promotions are barred except in the case of administrative error. It is my further understanding that administrative error occurs when an agency fails to perform a required, nondiscretionary action. Attached are documents relative to the letter of charges and to the decision to withhold the promotion action.

5. I knew that Chief Administrative Law Judge (CALJ) Brown sent a memorandum to ALJ (T) Chocallo informing her that her case production was unacceptably low and directing her to significantly increase her output. I was also aware that CALJ Brown instructed RCALJ Gitman to report ALJ (T) Chocallo's production on a weekly basis. This same procedure was used with a number of other administrative law judges whose production was thought to be unacceptably low and was in accordance with good administrative practices.

6. I do not recall when I first became aware of the fact that there was a controversy involving the request for hearing of Mrs. Pearl Taylor. I was generally aware that ALJ (T) Wanda P. Chocallo and attorneys from Com-

munity Legal Services, Inc. of Philadelphia did not have a harmonious professional relationship. I usually refer matters pertaining to specific problems, however, in the operational component charged with the responsibility for administering the particular function. I probably received correspondence from both ALJ (T) Chocallo and Community Legal Services regarding the controversy, but I do not remember any specific documents. I was briefed on the situation after ALJ (T) Chocallo had issued an Order barring Mr. Stein and Mr. Montes from representing Mrs. Taylor. Since this was not the proper procedure for barring an attorney or representative, I believe I indicated we should effect corrective measures and discussed possible courses of action in the interests of assuring a fair hearing for the claimant. I did not personally take part in preparation of the Order removing the case from ALJ (T) Chocallo nor am I familiar with the circumstances attendant to service of the Order. I believed the Order was valid and within the scope of the Appeals Council's authority as defined in the agency's regulations, viz: 20 CFR 416.1459—Removal of hearing to Appeals Council.

7. Based primarily on ALJ Chocallo's action in the Taylor case, I decided to file a letter of charges against her. I had been dissatisfied with her conduct in the Coleman (Mr. 'Doe') case and generally displeased with her attitude. It was, however, her conduct in barring Mrs. Taylor's attorney from further representation without due process and her defiance of the Appeals Council's Order which finally prompted me to take this action. I considered both acts to be gross abuses of discretion and in contravention of the law and regulations.

* * *

Affidavit, R. L. Trachtenberg

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration
P.O. Box 2518
Washington, D.C. 20013

[Seal]

Refer to
IHA-63

Bureau of
Hearings and Appeals

APR 1 1976

Office of General Counsel
U.S. Civil Service Commission
1900 E Street, N.W.
Washington, D.C. 20415

Dear Sir:

The Bureau of Hearings and Appeals, Social Security Administration, proposes to remove Wanda P. Chocallo, who was appointed a Supplemental Security Income Hearing Examiner, and who, since the passage of P.L. 94-202, is deemed appointed under section 3105 and subject as such to Subchapter II of Chapter 5 of Title 5, United States Code. Accordingly, the matter is hereby submitted to the Civil Service Commission to determine if there is good cause for the removal or other appropriate disciplinary action of this Hearing Examiner. The Charges against her are as follows:

General Charge I

Wanda P. Chocallo has refused to adhere to administrative direction.

Specific Charge IA: Refusal to comply with an administrative direction.

Ms. Chocallo heard the case of claimant John Coleman on December 29, 1975. Because Ms. Chocallo had not appeared for a previously scheduled hearing, and because of the lengthy legal arguments involved, the claimant's lawyer, Linda M. Bernstein, requested that the hearing be scheduled in two parts, with the legal arguments being heard first, and the 74 year old blind claimant appearing for his statement in a second part of the hearing if it became necessary for him to testify (Exhibit A, pgs. 1-2). This was denied by Ms. Chocallo, and the case heard on December 29, 1975. As a result of that hearing, the claimant's lawyer contacted the Administrative Law Judge in Charge of the Philadelphia Hearing Office, Judge James C. Lightfoot (Exhibit A, pgs. 4-7). Judge Lightfoot contacted Ms. Chocallo, requesting her version of the matter (Exhibit A, pg. 8). The ensuing correspondence (Exhibit A, pgs. 9-11) led to a scheduled meeting with the Acting Regional Chief Administrative Law Judge in the Philadelphia region. On January 14, 1976, Ms. Chocallo was contacted by Herman Snyder, Assistant Regional Representative, and asked to meet with Mr. Snyder and Acting Regional Chief Administrative Law Judge Sol Gitman at 9:00 a.m. on Monday, January 19, 1976 to discuss the John Coleman case and her production record. Ms. Chocallo arrived for the meeting at approximately 9:25 a.m. and insisted on taping the meeting. Since Judge Gitman did not agree to taping the meeting, Ms. Chocallo refused to remain. (Exhibit A, pg. 17 and pgs. 21-22). Mr. Snyder obtained Judge Gitman's approval to record the meeting and approached Ms. Chocallo with this agreement, but Ms. Chocallo refused to proceed with the meeting (Exhibit A, pgs. 20 and 22).

Since the stated purpose of the meeting was not an adversary nature, Ms. Chocallo's insistence on recording the meeting was unwarranted. Her refusal to remain for the meeting, even after her demand for taping was agreed to, constitutes a direct refusal to comply with an administrative directive.

Specific Charge IB: Direct violation of the Bureau Director's order.

On Friday, February 27, 1976, between 8:30 and 8:45 a.m. Regional Commissioner Rose Lepore called Jan J. Sagett, Executive Director of the Bureau of Hearings and Appeals, to notify him that Ms. Chocallo had in her possession a file on the Coleman case, which was involved in court litigation. Ms. Lepore advised him that Ms. Chocallo had offered the regional attorney access to the file for informational purposes, but that this arrangement was not satisfactory for the preparation of the case. Ms. Lepore indicated that when asked to turn over the actual case file, Ms. Chocallo refused. Regional Commissioner Lepore requested Mr. Sagett's assistance in obtaining the file.

Mr. Sagett, with the concurrence of the Bureau Director, Robert L. Trachtenberg, telephoned Judge Gitman, Acting Regional Chief Administrative Law Judge, and instructed him to direct Ms. Chocallo to release the case file under the Director's order and if she did not comply, to put the directive in writing (Exhibit A, pg. 28).

At approximately 9:15 a.m. on February 27, 1976, Judge Gitman orally directed Ms. Chocallo to release the file. This was followed by a written directive (Exhibit A, pgs. 29-30). Ms. Chocallo returned the written directive with her handwritten refusal to release the file without a

written legal opinion from General Counsel (Exhibit A, pgs. 29-31). This was followed by a typed refusal (Exhibit A, pg. 32).

The conduct of Hearing Examiner Wanda P. Chocallo described above constitutes a direct violation of a supervisor's order, a direct violation of the Bureau Director's order, and caused an impermissible interference with government Counsel's preparation of a legal proceeding.

Specific Charge IC: Failure to submit questionnaire requested by the Bureau Director.

Wanda P. Chocallo received an appointment as a Supplemental Security Income (SSI) Hearing Examiner on July 21, 1974. After a period of training from July 22 —August 30, 1974, Ms. Chocallo began work in the Philadelphia Office. It is to be expected that the first periods of production of a new employee will be below average. Ms. Chocallo's production, however, continued to fall far below the average production rate for both Hearing Examiners (SSI) and Administrative Law Judges. (See Exhibit B, pg. 6 for production by four week periods 11/8/74 through 1/3/76.) The national average monthly production for SSI Hearing Examiners for the quarter June 22 to September 19, 1975 was 17; Region III's average was 14; Ms. Chocallo's average was 8 (Exhibit B, pg. 4). As a result of this low production (47% of the national average), Ms. Chocallo was notified by the Bureau Director of the rate of her production in relation to production of other Hearing Examiners on November 20, 1975, and told to complete a questionnaire to explain the reasons for low production (Exhibit B, pgs. 1-3). This questionnaire was to be returned to Central Office by December 2, 1975. It was not received.

In the February 17, 1976 letter to Ms. Chocallo which resulted from the incidents referred to in Exhibit A, she was again told to submit the questionnaire. She was given an extension to February 27, 1976 (Exhibit A, pg. 27). The questionnaire has not been received to date.

Wanda P. Chocallo's failure to submit this questionnaire as ordered is a direct failure to comply with an administrative directive and hampers the Personnel Management authority and responsibility of the Bureau Director as outlined in Chapter 250 of the Federal Personnel Manual.

Sincerely yours,

(s) Robert L. Trachtenberg
Robert L. Trachtenberg
Director

Affidavit, R. L. Trachtenberg

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

Social Security Administration, Washington, D.C.

May 20, 1976

Wanda P. Chocallo, Administrative Law Judge
Bureau of Hearings and Appeals
1528 Walnut Street
Philadelphia, Pa. 19102

Dear Ms. Chocallo:

This refers to your letter dated May 5, 1976 concerning your grade level and rate of pay.

As you were informed in a letter dated April 5, 1976, Mr. Trachtenberg is recommending that an adverse action be taken against you. This being the case, it would be inappropriate to institute a personnel action at this time. Your grade level and rate of pay will be reviewed, if appropriate, upon completion of the pending proceedings.

I hope this explains the status of your salary.

Sincerely,
(s) Lois Schutt
Personnel Officer

[THE FOLLOWING HANDWRITTEN NOTATION MADE BY MR. TRACHTENBERG APPEARS ON FACE OF THIS LETTER:]

PTB—[Philip T. Brown]
Has CSC sent case back—shd we litigate this issue W/CSC?

Affidavit, R. L. Trachtenberg

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

Social Security Administration, Washington, D.C.

June 28, 1976

Mr. Charles J. Dullea, Director
Office of Administrative Law Judges
U.S. Civil Service Commission
1900 E Street N.W.
Washington, D.C. 20415

Dear Mr. Dullea:

This is in reply to your letter of May 28, 1976, in which you requested information about the employment status of Wanda P. Chocallo.

On July 21, 1974, Mrs. Chocallo was appointed to the position of Hearing Examiner-SSI (Attorney Examiner), GS-905-13, under the provisions of section 1631(d)(2) of the Social Security Act.

Section 3 of P.L. 94-202, approved January 2, 1976 provided:

> "The persons appointed under section 1631(d)(2) of the Social Security Act (as in effect prior to the enactment of this Act) to serve as hearing examiners in hearings under section 1631(c) of such Act may conduct hearings under titles II, XVI, and XVIII of the Social Security Act if the Secretary of Health, Education, and Welfare finds it will promote the achievement of the objectives of such titles, notwithstanding

the fact that their appointments were made without meeting the requirements for hearing examiners appointed under section 3105 of title 5, United States Code; but their appointments shall terminate no later than at the close of the period ending December 31, 1978, and during that period they shall be deemed to be hearing examiners appointed under section 3105 and subject as such to subchapter II of chapter 5 of title 5, United States Code, to the second sentence of such section 3105, and to all of the other provisions of such title 5 which apply to hearing examiners appointed under such section 3105."

Pursuant to the above, on March 3, 1976, the secretary found that it would promote the objectives of title II, XVI, and XVIII of the Act for hearing examiners appointed under section 1631 (d) (2) to conduct hearings and render decisions in cases arising under such titles (4) Federal Register 9242, March 3, 1976). He delegated full authority to implement the decision to the Director, Bureau of Hearings and Appeals, including authority to designate specific categories of cases to be assigned.

Immediately thereafter, we processed the appropriate documents to convert individuals holding appointments under section 1631 (d) (2) to the newly created position of Administrative Law Judge (Temporary), GS-935-14. All but ten were so converted, of which Mrs. Chocallo was one. Mrs. Chocallo's papers were not processed, because we were initiating an adverse action against her and it did not appear to be appropriate to be processing a promotion at the same time we were recommending a removal action. The other nine individuals were not promoted because they

did not meet the time-in-grade requirements of the Whitten Amendment.

In your letter, you ask our opinion whether the authority "to convert" the SSI hearing Examiners to the Administrative Law Judge (Temporary position was considered discretionary. We strongly believe that this authority was not discretionary and that, regardless of any action we did or did not take with respect to a particular individual, each person appointed pursuant to section 1631(d)(2) was by operation of law "converted" to an administrative law judge position once the Secretary made the finding prescribed in P.L. 94-202. It is our opinion that even if we had taken no action whatsoever after the Secretary made his finding, each individual appointed under section 1631 (d)(2) was thereupon deemed to have been appointed under 5 U.S.C. 3105 and subject to all the provisions of title 5 that apply to administrative law judges appointed thereunder. Reading section 3 of P.L. 94-202 quotes above in conjunction with section 1 (which made proceedings under title XVI subject to the APA), it is clear that individuals appointed under 1631(d)(2) were deemed to be ALJs but that the Secretary was given discretion as to how best to utilize these ALJs to further the objectives of titles II, XVI and XVIII, of the Social Security Act.

The "conversion," if that indeed is the proper term, should be distinguished from the ministerial function of establishing position description, etc., and processing the necessary paperwork to make a formal record of the conversion from the position of SSI Hearing Examiner to that of Administrative Law Judge. Our failure to perform the clerical processing to "convert" Mrs. Chocallo did not, in

our opinion, in any way affect the status of administrative law judge that she acquired once the Secretary made his finding of March 3, 1976.

As I stated previously, the only reason for not processing Mrs. Chocallo's promotion was our belief that it would be inappropriate to simultaneously promote and institute removal proceedings against her. If, in your opinion, it would not prejudice the removal proceedings and would clarify the jurisdictional issue of whether your office should be involved, we will process Mrs. Chocallo's promotion. If we were in error, we have no reluctance in correcting the mistake.

The personnel forms relating to Mrs. Chocallo's initial appointment, which you requested, are enclosed. I hope this letter clarifies our view about this matter. Should you have further questions, please do not hesitate to contact me.

Sincerely yours,
(s) Robert L. Trachtenberg
Robert L. Trachtenberg, Director

Enclosures

Affidavit, R. L. Trachtenberg

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

Social Security Administration

Jul 29, 1976

Mr. Charles J. Dullea, Director
Office of Administrative Law Judges
U.S. Civil Service Commission
1900 E. Street, N.W.
Washington, D.C. 20415

Dear Mr. Dullea:

In accordance with your letter dated July 8, 1976, and your subsequent telephone discussion with Judge Brown of this office, enclosed is a copy of the SF-50 promoting Miss Wanda P. Chocallo from Attorney-Examiner (GS-905-13) to Administrative Law Judge (Temporary) (GS-935-14 effective April 11, 1976.

In your discussion with Judge Brown, you indicated that once this action was taken it would resolve the jurisdictional issue regarding the letter of charges previously forwarded and that you would proceed to act upon the letter of charges. We have taken the action promoting Miss Chocallo with the understanding that this would place jurisdiction in your office and would prejudice the charges made against Miss Chocallo even though they occurred prior to her conversion to Administrative Law Judge (Temporary)

Sincerely yours,
Robert L. Trachtenberg. Director
Enclosure

Title 42 U.S. Code §1985

LAW

THE CIVIL RIGHTS ACT, Title 42 United States Code

§1985. Conspiracy to interfere with civil rights—Preventing officer from performing duties

(1) If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States or from discharging any duties thereof; * * * or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his propeerty so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

Obstructing justice; intimidating party, witness or juror

* * * if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

Title 42 U.S. Code §1985

Depriving persons of rights or privileges

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; * * * in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

Title U.S. Code §§372, 241, 1505

CRIMES, Title 18 United States Code

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§372. Conspiracy to impede or injure officer

If two or more persons in any State, Territory, Possession, or District conspire to prevent, by force, intimidation, or threat, any person from . . . holding any office . . . under the United States, or from discharging any duties thereof, * * * or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder or impede him in the discharge of his official duties, each of such persons shall be fined not more than $5,000 or imprisoned not more than six years, or both.

§241. Conspiracy against rights of citizens

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same * * * They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; * * *"

§1505. Obstruction of proceedings before departments, agencies and committees

Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any witness in any proceeding

pending before any department or agency of the United States or in connection with any inquiry or investigation being had by either House, or any committee of either House, or any joint committee of Congress; or

Whoever injures any party or witness in his person or property on account of his attending or having attended such proceeding, inquiry or investigation or on account of his testifying or having testified to any matter pending; or

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which such proceedings is being had before such department or agency of the United States, or the due and proper exercise of the power of inquiry under which such inquiry or investigation is being had by either House, or any committee of either House or any joint committee of Congress —Shall be fined not more than $5000 or imprisoned not more than five years or both.

SOCIAL SECURITY ACT, Title 42 United States Code

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§405. Evidence, procedure, and certification for payments—Rules and regulations; procedures.

(a) * * *

Administrative determination of entitlement to benefits; findings of fact; hearings; investigations

(b) The Secretary is directed to make findings of fact, and decisions as to the rights of any individual applying for a payment under this subchapter. Upon request by any such individual * * * who makes a showing in writing that his or her rights may be prejudiced by any decision the Secretary has rendered, he shall give such applicant * * * reasonable notice and opportunity for a hearing with respect to such decision, and, if a hearing is held, shall, *on the basis of evidence adduced at the hearing*, affirm, modify or reverse his findings of fact and such decision. * * * The Secretary is further authorized * * * to conduct such investigations and other proceedings as he may deem necessary or proper for the administration of this subchapter. In the course of any hearing, investigation, or other proceeding, he may administer oaths and affirmation, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Secretary even though inadmissible under rules of evidence applicable to court procedure.

Title 42 U.S. Code §§405, 1631

Issuance of subpoenas in administrative proceedings

(d) For the purpose of any hearing, investigation, or other proceeding authorized or directed under this subchapter, or relative to any other matter within his jurisdiction hereunder, the Secretary shall have power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the Secretary. * * *

Self-Incrimination

(f) No person so subpoenaed or ordered shall be excused from attending or testifying or from producing books, records, correspondence, documents, or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. * * *"

Judicial review

(g) Any individual, after any final decision of the Secretary made after a hearing to which he was a party * * * may obtain a review of such decision by a civil action * * * Such action shall be brought in the district court of the United States * * *"

Finality of Secretary's decision

(h) The findings and decision of the Secretary after a hearing shall be binding upon all individuals who were parties to such hearing. No findings of fact or decision of the Secretary shall be reviewed by any person, tribunal, or governmental agency except as herein provided. * * *"

Title 42 U.S. Code §§405, 1631

§1631(c)(1) * * * The Secretary is authorized * * * to hold such hearings and to conduct such investigations and other proceedings as he may deem necessary or proper for the administration of this title [Title XVI] in the course of any hearing investigation, or other proceeding.

§1631(c)(1) * * * if a hearing is held, [the Secretary] shall, on the basis of the evidence adduced at the hearing, affirm, modify, or reverse his findings of fact and such decision. * * * In the course of any hearing, investigation, or other proceeding, he may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Secretary even though inadmissible under the rules of evidence applicable to court procedure. * * * (3) The final determination of the Secretary after hearing under paragraph (1) shall be subject to judicial review as provided in section 205(g) [42 USC 405(g)] to the same extent as the Secretary's final determinations under section 205(h).

20 C.F.R. §404.922

REGULATIONS OF THE SECRETARY OF HEW—20
Code of Federal Regulations

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§404.922 Disqualification of Administrative Law Judge [presiding officer]

No Administrative Law Judge shall conduct a hearing in a case in which he is prejudiced or partial with respect to any party, or where he has any interest in the matter pending for decision before him. Notice of any objection which a party may have to the Administrative Law Judge who will conduct the hearing, shall be made by such party at his earliest opportunity. The Administrative Law Judge shall consider such objection and shall, in his discretion, either proceed with the hearing or withdraw. * * * If the Administrative Law Judge does not withdraw, the objecting party may, after the hearing, present his objections to the Appeals Council, as provided in §§404.945-404.949, as reasons why the Administrative Law Judge's decision should be revised or a new hearing held before another Administrative Law Judge.

Title 5 U.S. Code §§552, 554, 556, 557

ADMINISTRATIVE PROCEDURE ACT, Title 5, United States Code

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* * *

§552

(d) Access to Records. Each agency that maintains a system of records shall—

(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;

* * *

(e) Agency Requirements. Each agency that maintains a system of records shall—

(1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;

(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual—

(A) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(B) the principal purpose or purposes for which the information is intended to be used;

(C) the routine uses which may be made of the information, as published pursuant to paragraph (4) (D) of this subsection; and

(D) the effects on him, if any, of not providing all or any party of the requested information;

* * *

(g) (1) Civil Remedies. Whenever any agency—

(A) makes a determination under subsection (d) (3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;

(B) refuses to comply with an individual request under subsection (d) (1) of this section;

(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual.

the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

(2) (A) In any suit brought under the provisions of subsection (g) (1) (A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(3) (A) In any suit brought under the provisions of subsection (g) (1) (B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(4) In any suit brought under the provisions of subsection (g) (1) (C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of—

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of $1,000; and

(B) the costs of the action together with reasonable attorney fees as determined by the court.

* * *

Title 5 U.S. Code §§552, 554, 556, 557

§554 Adjudications

*** (d) The employee who presides at the reception of evidence pursuant to section 556 of this title shall make the recommended decision or initial decision required by section 557 of this title, unless he becomes unavailable to the agency. Except to the extent required for the disposition of ex parte matters as authorized by law, such an employee may not (1) consult a person or party on a fact in issue, unless on notice and opportunity for all parties to participate; or (2) be responsible to or subject to the supervision or discretion of an employee or agent engaged in the performance of investigative or prosecuting functions for an agency.

§556. Hearings; presiding employees; powers and duties, burden of proof, evidence; record as basis of decision.

(a) This section applies ***to hearings required by section 553 or 554 of this title to be conducted in accordance with this section. (b) There shall preside at the taking of evidence (1) the agency; *** (3) one or more hearing examiners appointed under section 3105 of this title.

§557 Ex parte communications. (a) This section applies, according to the provisions thereof, when a hearing is required to be conducted in accordance with section 556 of this title. *** (d) (1) In any agency proceeding which is subject to subsection (a) of this section, except to the extent required for the disposition of ex parte matters as authorized by law—(A) no interested person outside the agency shall make or knowingly cause to be made

to any member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relevant to the merits of the proceeding; (B) no member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding shall make or knowingly cause to be made to any interested person outside the agency an ex parte communication relevant to the merits of the proceeding *** (E) the prohibitions of this subsection shall apply beginning at such time as the agency may designate, but in no case shall they begin to apply later than the time at which a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of his acquisition of such knowledge . . ."

FEDERAL RULES OF CIVIL PROCEDURE

Rule 7. Pleadings Allowed; Form of Motions.

(a) PLEADINGS. There shall be a complaint and an answer *** No other pleading shall be allowed, except that the court may order a reply to an answer or a third party answer.

(b) MOTIONS AND OTHER PAPERS. ***"

Rule 8. General Rules of Pleading.

(a) CLAIMS FOR RELIEF. *** (b) DEFENSES: FORM OF DENIALS. A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. ***

(c) AFFIRMATIVE DEFENSES. In pleading to a preceding pleading, a party shall set forth affirmatively *** estoppel *** re judicata *** and any other matter constituting an avoidance or affirmative defense.

Rule 12. Defenses and Objections—When and How Presented—By Pleading or Motion-Motion for Judgment on Pleadings

(a) WHEN PRESENTED. A defendant shall serve his answer within 20 days . . .

(b) HOW PRESENTED. Every defense, in law or fact, to a claim for relief in any pleading *** shall be asserted in the responsive pleading thereto if one is required,

except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join an indispensable. ***

(e) MOTION FOR JUDGENT ON THE PLEADINGS. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. ***"

Rule 38. JURY TRIAL OF RIGHT.

(a) RIGHT PRESERVED. The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate.

Rule 56. SUMMARY JUDGMENT.

(a) *** (b) *** (c) MOTION AND PROCEEDINGS THEREON. *** The judgment sought shall be rendered forthwith if the pleadings depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. ***"

Order on Petition for Rehearing

UNITED STATES COURT OF APPEALS
For the Third Circuit

No. 82-1754

Wanda P. Chocallo

v.

Bureau of Hearings and Appeals, SSA and Robert L. Trachtenberg, Director, Bureau of Hearings and Appeals, Balston Tower #2 Building, 801 N. Randolph St., et al.

Hon. Wanda P. Chocallo, Appellant

(D.C. Civil No. 77-2310)

SUR PETITION FOR REHEARING

Present: SEITZ, *Chief Judge*, ADAMS, GIBBONS, HUNTER, WEIS, HIGGINBOTHAM, SLOVITER, BECKER and MARIS, *Circuit Judges*

The petition for rehearing filed by appellant in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court,
(s) John J. Gibbons
Judge

Dated: June 27, 1983